



KING EDWARD VI  
SHELDON HEATH ACADEMY

## EXCLUSIONS POLICY

Other relevant policies:

Behaviour Policy

Staff Safeguarding Children Policy

Child Protection Policy

Keeping Children Safe in Education: Statutory Guidance for Schools and Colleges – Part 1 Child Protection and Safeguarding – Sharing Information Guidance

The principal legislation to which this policy relates is:

- 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 Act 1996; and
- 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 our funding agreement and articles of association.



This policy was adopted by the Student Welfare Committee on June 10th 2021.  
Next review due Summer Term 2023, or earlier if the need arises.

## **1. Rationale**

King Edward VI Sheldon Heath Academy is committed to developing responsible, aspirational, independent, happy and well-rounded young people with the self-belief to reach their goals. Our work will be underpinned by our core values and driven by our unequivocal belief in equality and tolerance. We will secure this through inspirational and enthusiastic teaching, the provision of a broad, challenging curriculum and excellent support and care. We want to ensure our young people fulfil and exceed their potential, be proud of who they are, be committed to lifelong learning and leave well-equipped to navigate their way through the challenges of the 21st Century; positively contributing to society both economically and socially.

The Academy's Behaviour policy emphasises positive strategies and, for the most part, the Academy environment is one of cooperation and shared responsibility. However, some incidents of unacceptable behaviour are not satisfactorily resolved through the normal channels and exclusions have to be considered as a last resort.

## **2. Key Requirements/ Legal Duties**

This policy responds to the requirements of the Education Act 2002; all schools must have policies on student discipline and exclusion, which must be available to all parents and prospective parents. Parents and carers have the right to appeal against the decision to exclude a student. This policy is drawn using the guidance provided by the Department for Education (DfE) produces for the process of exclusion (Exclusion from maintained schools, academies and pupil referral units in England).

## **3. Key Principles**

This document deals with the policy and practice which informs the Academy's use of exclusion. It is underpinned by the shared commitment of all members of the Academy community to ensure:

- The best possible education for all students at the Academy, whatever their background or ability.
- The safety and well-being of all members of the Academy's community, and to maintain an appropriate education environment in which all can learn and succeed.
- That students have the right to expect that their learning should not be disrupted by others. The Academy's Behaviour policy emphasises the students' entitlements and responsibilities.

## **4. General Principles**

The Local Governing Body has determined that the Academy will use exclusions, albeit sparingly, in response to serious breaches of the Academy's behaviour policy and where allowing the student to remain at the Academy would seriously harm the education or welfare of the student or others at the Academy. The decision to exclude a student may thus be taken in the following circumstances:

- In response to a serious breach, or persistent breaches, of the Academy's Behaviour Policy and Code of Conduct
- If allowing the student to remain at the Academy would seriously harm the education or welfare of the student or others in the Academy.

Only the Principal (or, in the absence of the Principal, the Vice Principals) has authority to exclude a student from the Academy.

Exclusions whether fixed-term or permanent may be used in response to any of the following, all of which are examples of unacceptable conduct and breach the Academy's Behaviour Policy:

- Physical assault against a student
- Physical assault against an adult
- Verbal abuse/threatening behaviour against student
- Verbal abuse/threatening behaviour against an adult
- Bullying
- Racist abuse
- Sexual misconduct/ Indecent behaviour
- Drugs, alcohol.
- Substance misuse
- Damage
- Theft
- Weapons related
- Posing a health and safety threat
- Arson
- Defiance
- Bringing the Academy into disrepute

Also, in line with the exclusion policy, the Academy will not tolerate persistent and defiant behaviours over time where sanctions and interventions have failed to bring about positive improvement. In these circumstances, a student's behaviour would be deemed to be seriously harming the education and welfare of the student or others at the Academy, thus placing the student at high risk of permanent exclusion.

This is not an exhaustive list and there may be other situations where the Principal judges that exclusion is an appropriate sanction.

## **5. Types of Exclusion**

There are two types of exclusion:

- Fixed period
- Permanent

Any decision to exclude a student, whether for a fixed period or permanently, must be made in line with the principles of administrative law, i.e. that it is: lawful (with respect to the legislation relating directly to exclusions and a school's wider legal duties, including the European Convention on Human Rights and the Equality Act 2010); rational; reasonable; fair; and proportionate.

### **Fixed Period Exclusion**

A student can be excluded from the Academy for one or more fixed periods not exceeding 45 school days in any one school year. Full time education must be provided by the Academy after the sixth continuous day of any fixed period exclusion. A fixed-period exclusion can also be for parts of the school day.

The law does not allow for extending a fixed-period exclusion or 'converting' a fixed-period exclusion into a permanent exclusion. In exceptional cases, usually where further evidence has come to light, a further fixed-period exclusion may be issued to begin immediately after the first period ends; or a permanent exclusion may be issued to begin immediately after the end of the fixed period.

### **Permanent Exclusion**

A student can be permanently excluded from the Academy. The decision to exclude permanently is a serious one. It is usually the final step in a process of dealing with disciplinary offences

following a wide range of other strategies, which have been tried without success. It is an acknowledgement by the Academy that it has exhausted all available strategies for dealing with the student and is used as a last resort.

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

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

Although permanent exclusion will only be used as a last resort, when all other reasonable steps have been taken and when allowing the student to remain at the Academy would be seriously detrimental to the education and/or welfare of other students or teachers, there may be exceptional circumstances where, in the judgement of the Principal, it is appropriate to exclude permanently for a first or 'one-off' offence. Thus, permanent exclusion may, on rare occasions, be the only possible response to a single incident of very extreme misconduct.

When it is necessary to exclude a student, parents will be contacted by telephone, if possible, at the earliest possible opportunity. The exclusion will always be confirmed by a letter which will set out the reasons for the exclusion and also inform the parents of their rights to make representations to the Governing Body. Each incident of exclusion will be recorded in a standard format (Appendix 2)

## **6. Exercise of Discretion – The decision to exclude**

The Principal will always look at the particular circumstances of each case. In considering whether permanent exclusion is the most appropriate sanction, the Principal will consider:

- The gravity of the incident, or series of incidents, and whether it constitutes a serious breach of the Academy's Behaviour Policy.
- The effect that the student remaining at the Academy would have on the education and welfare of other members of the school community.

In line with its statutory duty, these same two tests of appropriateness will form the basis of the deliberations of the Governors Student Welfare Committee, when it meets to consider the Principal's decision to exclude.

Only the Principal can exclude a student from the Academy. A permanent exclusion will be taken as a last resort. The Academy 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."

Before deciding whether to exclude a student, either permanently or for a fixed period, the Principal 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)

## **7. Behaviour outside the Academy**

Students who breach the Academy's Behaviour Policy whilst on school 'business' such as trips and journeys, sports fixtures or a work-experience placement will be dealt with in the same

manner as if the incident had taken place at the Academy. For incidents that take place outside the Academy and not on school business, this policy will still have effect if there is a clear link between that behaviour and maintaining good behaviour and discipline among the student body as a whole. This includes behaviour in the immediate vicinity of the Academy or on a journey to and from the Academy.

## **8. Special Educational Needs and Disabilities Students and Children**

### **Looked after**

When considering whether to exclude a student with SEND, the Academy pays due regard to government guidance which states that schools should try every practicable means to maintain a student with SEND in school and should seek local authority and other professional advice as appropriate; the Academy will permanently exclude students with SEND statements only in exceptional circumstances.

Where the Academy has concerns about the behaviour, or risk of exclusion, of a child with additional needs, a pupil with a statement of SEN or a looked after child it will, in partnership with others (including the local authority as necessary), consider what additional support or alternative placement may be required. This could involve assessing the suitability of provision for a student's SEN. Where a pupil has a statement of SEN, the Academy will consider requesting an early annual review or interim / emergency review.

## **9. Challenging exclusion**

The Academy's letter informing of an exclusion also informs how to challenge the decision.

### **Challenging a fixed period exclusion**

A fixed period exclusion can be challenged if a student has been excluded for more than 5 school days in a term or an exclusion will mean they will miss a public exam or national curriculum test. For exclusions of 5 school days or less, parents can ask the governing body to consider their views.

### **Challenging a permanent exclusion**

A permanent exclusion can be challenged with the governing body. If they agree with the exclusion, an appeal can be made to the local council or the Academy Trust.

### **Discrimination and other complaints**

A claim can be made to a court or a tribunal if it is believed that a child has been discriminated against. The Equality Advisory Support Service can provide help and advice.

For more general complaints the Academy's complaints process must be followed.

## **10. Procedures for exclusions**

The procedures for exclusions are presented in detail in appendix 1. Sample letters and other documents relating to exclusions are in appendix 2. Statutory guidance is on appendix 3.

### **Risk of prosecution if child is found in public place**

For the first 5 school days of an exclusion, it's the parents'/carers' responsibility to make sure that the excluded child isn't in a public place during normal school hours unless there is a good reason. Failure to do so may lead to a prosecution.

## **11. Monitoring, Intervention and Support**

There is a range of strategies in place at the Academy to address behaviour that may lead to exclusion. Students who are identified as at risk of exclusion will be offered additional provision to meet their individual needs. These additional measures may include:

- Support at TIER 1 and TIER 2 of our pastoral provision.
- Engaging with parents.
- Mentoring.
- Placement on a daily report.
- Detentions or other sanctions.
- A change of class, set or band.
- Curriculum alternatives.
- A managed move to another school.
- Consideration with colleagues, of possible interventions within school.
- Assessment of Special Educational Needs, including possible placement in a special school.
- Allocation of a key worker from the SEND team.
- Sessions with the Academy's counsellor.
- Implementation of a Pastoral Support Programme.
- Referral to other relevant agencies.

## **12. Roles and Responsibilities**

In addition to the specific duties in appendix 1:

- The Local Governing Body is responsible for deciding whether or not to confirm the Principal's decision to exclude a student.
- The Principal is responsible for ensuring the fair and consistent implementation of the policy and for all decisions on whether or not to exclude a student.
- The Senior Leader (Student Development) is responsible for:
  - Monitoring the implementation of this policy, including recording and analysing the profile of excluded students.
  - Ensuring that education is provided for any student from day six of a fixed term exclusion, depending on the circumstances. ○
  - Ensuring the prompt and effective administration of all matters relating to an exclusion.
- The Heads of Year are responsible for the arrangements to support students in danger of exclusion and for the reintegration of students returning to the Academy after a fixed-term exclusion. They are also responsible for ensuring that work is provided for all excluded students.
- All staff are responsible to providing appropriate work to the Heads of Year for students excluded for two or more days.
- Parents are responsible for excluded students to complete the work set and for bringing this work to the re-admission meeting.

## **Recording and Monitoring**

All exclusions will be recorded according to guidelines from the DfE. Exclusion data, analysed by sub-group, will be discussed with senior leaders and presented to every Student Welfare meeting. This analysis and subsequent discussions will help the Academy further refine systems and processes where appropriate to ensure that students are effectively supported in developing the responsible behaviours that will allow them to fully participate in the Academy's life.

## **Appendix 1: Procedures for exclusion**

### **A) Decision to Exclude**

#### **Action to be invoked by Pastoral Staff in Serious Disciplinary Matters**

When a serious incident occurs, the pastoral team must interview students. If the nature of the incident is extremely serious then at least two staff members should be present to conduct the interview. The student should be questioned and given ample opportunity to give a response. The student 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 KESH Academy to decide on what further action should be undertaken.

In discharging their duties the Principal and Governors of KESH Academy will have regard to DfE guidance on exclusions. A decision to exclude a student will only be taken:

- In response to serious breaches of KESH Academy's Behaviour Policy.
- If allowing the student to remain in KESH Academy would seriously harm the learning or welfare of the student, other students or staff in the Academy
- In cases where there has been a major breach of normal expectations of conduct [and/or a breach of the criminal law]

Before excluding a student, in most cases a range of alternative strategies will have been tried. Where a one-off incident of sufficient gravity has taken place, this may not apply.

#### **Responsibilities of the Principal**

The Principal alone (or his/her designate, if s/he is absent) has the power to exclude students and this must be on disciplinary grounds. The Principal will only decide to exclude a student permanently:

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

In considering the exclusion of a student the Principal should ensure that the following range of activities are carried out:

- Undertake a thorough investigation.
- Consider all the relevant facts and firm evidence to support the allegations.
- Take into account KESH Academy's Behaviour Policy, including the Equal Opportunities and Anti Bullying policies.
- Check whether an incident appeared to be provoked by racial or sexual harassment.
- Ensure that all 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 student's individual problems within the capabilities of KESH Academy.

Before deciding to exclude a student permanently the Principal may first try a range of strategies as outlined in the Behaviour Policy, including fixed term exclusion. Only when other strategies have been tried without success will the Principal consider permanent exclusion. Except where

a one-off incident of sufficient gravity has taken place; in such occasions the severity of the offence will merit permanent exclusion, even when there has been no record of poor behaviour.

The Principal may exclude a student for up to 45 school days in any academic year. Any exclusion beyond 45 school days will be permanent. However, before that point is reached the Principal will have held discussions through the Sharing Panel to arrange an appropriate placement in another school or Pupil Referral Unit (PRU). The Principal will aim for the shortest possible period of exclusion but however brief an exclusion plan will be made to reintegrate the student effectively.

## **B) Exclusions**

### **Informing Parent(s)/carer(s) about the Exclusion**

The Principal will make sure that the Parent(s)/carer(s) are notified immediately by telephone which will be followed by a letter within one school day. An exclusion will normally begin on the next school day.

Letters about fixed period and permanent exclusions will explain:

- Why the Principal decided to exclude the student
- If the exclusion is for a **fixed** period, the length of the exclusion and the date and time the student should return to the Academy
- If the exclusion is **permanent**, the date the permanent exclusion takes effect, and the fact that is permanent.
- The Parent(s)/carer(s) right to make representations about the exclusion to the Governing Body's Disciplinary Panel and:
  - How the student may be involved in representations
  - How any such representations should be made.
  - where there is a legal requirement for the governing board to consider the exclusion, that parents have a right to attend a meeting, to be represented at that meeting (at their own expense) and to bring a friend.
- The latest date the Parent(s)/carer(s) can put a written statement to the Disciplinary Panel.
- The arrangements for enabling the student to continue their education, including setting and marking the student's work.
- The Parent(s)/carer(s) right to see and have a copy of their child's record.
- That for excluded students of compulsory school age, the parents have a duty to ensure that the student is not present in a public place at any time during school hours; parents who fail to comply with this duty commit an offence and may be given a fixed penalty notice or may be prosecuted.
- The letters will also draw attention to sources of free and impartial information this information should include a link to this statutory guidance on exclusions (<https://www.gov.uk/government/publications/school-exclusion>); a link to sources of impartial advice for parents such as the Coram Children's Legal Centre ([www.childrenslegalcentre.com](http://www.childrenslegalcentre.com)), or ACE Education (<http://www.aceed.org.uk>) and their advice line service on 03000 115 142 on Monday to Wednesday from 10 am to 1 pm during term time); and where considered relevant by the head teacher, links to local services, such as Traveller Education Services, the Information Advice & Support Services Network (formerly known as the local parent partnership) (<https://councilfordisabledchildren.org.uk/information-advice-and-supportservicesnetwork/about>), the National Autistic Society (NAS) School Exclusion

Service (England) (0808 800 4002 or [schoolexclusions@nas.org.uk](mailto:schoolexclusions@nas.org.uk)), or Independent Parental Special Education Advice (<http://www.ipsea.org.uk/>).

If a student is excluded for a further fixed-period following their original exclusion, or is subsequently permanently excluded, the Principal must inform parents without delay and issue a new exclusion notice to parents.

### **Informing the Student Welfare Committee**

The Principal will inform the Chairman of the Governing Body's Student Welfare Committee of:

- All permanent exclusions.
- All exclusions which result, separately or in total, in the student missing more than five school days in any one term, or which deny students the chance to take a public examination.

The Principal will also notify the local authority and governing board once per term of any other exclusions not already notified. Notifications will include the reason(s) for the exclusion and the duration of any fixed-period exclusion. For a permanent exclusion, if the student lives outside the Academy's local authority area, the Principal will also notify the student's 'home authority' of the exclusion and the reason(s) for it without delay.

### **Responsibilities of the Local Governing Body**

The Governors do not have the right to exclude a student. Governors will review the use of exclusion at KESH Academy regularly. The Governing Body may delegate their functions with respect to the consideration of an exclusion decision to the Disciplinary Panel; the Disciplinary Panel will be formed by at least three Governors of the LGB. The Governing Body will also establish an independent Appeal Panel when the need arises. The Governing Body must ensure that parents/carers, the Principal and a representative from the LA (in the case of maintained schools) are invited to attend an exclusion meeting and must make reasonable endeavours to arrange the meeting for a date and a time that is convenient for all but in compliance with the relevant statutory time limits (however, its decision will not be invalid simply on the grounds that it was not made within these limits).

### **The Role of the Disciplinary Panel in Fixed Term Exclusion Cases**

The Disciplinary Panel will consist of three Governors who will review the use of exclusion within KESH Academy, including considering the views of the Parent(s)/carer(s) of an excluded student, and deciding whether or not to confirm exclusions of more than five school days or those where a student would miss an opportunity to take a public examination. The Governing Body will appoint a clerk to the Disciplinary Panel to provide advice on the exclusions process and to handle the administrative arrangements for considering exclusions.

If the exclusion is for five school days or fewer the Disciplinary Panel will not direct reinstatement but will consider any statement from the parent(s)/carer(s). If the exclusion causes the student to miss sitting a public examination the Disciplinary Panel will meet before the public examination. Where a public examination is concerned, if it is not practical for the Disciplinary Panel to meet, the Chair of the Panel will consider the exclusion. Alternative arrangements to allow an excluded student to take public examinations will be considered.

In cases of:

- Permanent exclusions;
- Fixed period exclusions totalling more than five school days in any one term, where the parent expresses a wish to make formal representations to the governing body.

- Exclusions which would result in a student missing a public examination. The Disciplinary Panel must meet to:
- Consider the circumstances in which the student was excluded;
- Consider any representations about the exclusion made by the parent and by the LA;
- and
- Consider whether the student should be reinstated immediately, reinstated by a particular date or not reinstated.

In the case of a fixed-period exclusion which would result in the student being excluded from the school for a total of five days or less in any one term, the discipline panel must meet to consider any representations made by the parent. In such cases, the governing body cannot direct reinstatement of the student.

The regulations set statutory time limits for the discipline panel's consideration of exclusions.

- In the case of permanent exclusion and one or more fixed-term exclusions totalling more than 15 days in any one term (where parents wish to make representation) the panel must consider them no earlier than 6 school days and no later than 15 schools days after receiving notification of the exclusion.
- In the case of one or more fixed-term exclusion totalling more than 5 days but not more than 15 school days in any one term (where the parent wishes to make representations) the panel must convene between the 6th and the 50th school day after receiving notification of the exclusion.
- Where a student may miss a public examination as a result of the exclusion, the panel must, if practical, consider the exclusion before the student is due to take the examination.
- In the case of a fixed-term exclusion which would result in a student being excluded for a total of 5 days or less in a term (and the parent has made representations to the governing body), there is no statutory time limit, but the panel would be expected to meet within a reasonable timescale.
- In reaching their decision on whether to direct reinstatement, the panel are required to have regard to any guidance given by the Secretary of State. They should have regard to any representations made by the parent, and whether the Principal has complied with the exclusions procedure and has had regard to the Secretary of State's guidance. If they decide that a student should not be reinstated, they must inform the parent, the Principal and the LA of their decision. In the case of a permanent exclusion, they must notify the parent in writing of their decision and the reason for it. Their letter must also advise the parent of his or her right to appeal against their decision; whom to contact; the last date for lodging an appeal; and that the notice of appeal should set out the grounds of appeal.

Unless there are strong reasons to refuse, the chair of the Disciplinary Panel should allow the excluded student to attend the meeting and present their case if the parent(s)/carer(s) and the student ask for this. But the parent(s)/carer(s) formally remain the appellant unless the student is 18 or over.

### **Procedure at the meeting**

If the student is back in the Academy before the Disciplinary Panel meets, the meeting still enables the parent(s)/carer(s) to give their views. The Disciplinary Panel can also consider whether more information should be added to the student's record.

If the student is still excluded when the meeting takes place, the Disciplinary Panel should decide whether to direct re-instatement. In reaching their decision the panel should:

- consider the parent(s)/carer(s) statements;

- have regard to the guidance on the appropriate use of exclusion from DfE and in KESH Academy's Behaviour Policy and consider whether the Principal has tried sufficient approaches to improve a student's behaviour before resorting to exclusion, and whether any further strategies might be an alternative to exclusion.

### **The Role of the Disciplinary Panel in Permanent Exclusion Cases**

For permanent exclusion, the Disciplinary Panel should normally satisfy itself that all possible strategies to improve a student's behaviour were tried without success, strategies should include those in DfE guidance, including a Pastoral Support Programme. For children with statements of SEN, revising the statement might be better than resorting to exclusion.

For permanent exclusions, the Disciplinary Panel will consider the exclusion and decide whether the student should be reinstated. Such consideration will take account of the student's disciplinary record and the likely impact of their continued attendance. The Disciplinary Panel may not attach conditions to the re-instatement of a student.

If the Disciplinary Panel upholds the Principal's decision to exclude a student permanently, it will write within one school day to the parent(s)/carer(s):

- giving the reasons for the decision;
- explaining 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;
- giving the name and address of the person the parent(s)/carer(s) should contact if they wish to appeal, explaining that any notice of appeal should explain the grounds of appeal and stating the latest date for giving notice (15 school days from the date of the Disciplinary Panel's decision). The parent(s)/carer(s) has the right to appeal to the panel even if they did not make a case to the Disciplinary Panel.

If the Disciplinary Panel upholds a decision to exclude a student permanently it will notify the Local Authority in writing of this decision within one school day of the hearing. The Disciplinary Panel's decision on fixed term exclusions is final. In the case of permanent exclusions, parent(s)/carer(s) may appeal to an Independent Review Panel.

### **After the meeting – Fixed Term and Permanent Exclusions**

A note of the Discipline Committee's views on the exclusion shall normally be placed on the student's record with a copy of the Principal's exclusion letter. In the case of a permanent exclusion, the Governing Body must ensure that a student's name is removed from the Academy admissions register if:

- 15 school days have passed since the parents were notified of the governing board's decision to not reinstate the student 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.

### **C) Independent Review Panels**

#### **Independent Review Panel Hearings**

Parent(s)/carer(s) whose child is excluded permanently from KESH Academy have the right to appeal against the Disciplinary Panel's decision to uphold the exclusion. This appeal is made

to the Independent Review Panel. The right of appeal is unrestricted, subject to the time limit. Any application made outside of the legal time frame will be rejected by the Academy.

The Independent Review Panel will comprise three independent panel members plus a clerk appointed by the Governing Body (the appointed clerk should not have served as clerk to the Governing Body). The appointed clerk must:

- Make reasonable efforts to inform the following people that they are entitled to: make written representations to the panel; attend and make oral representations to the panel; be represented; and (in the case of a parent), to bring a friend:
  - the parents;
  - the Principal (where an excluding Principal has left the school, the panel may use its discretion in deciding whether also to invite this person to make representations);
  - the governing body; and
  - the local authority (in the case of a maintained school or pupil referral unit).
- Make reasonable efforts to circulate to all parties, including to panel members and the SEN expert, copies of relevant papers 5 school days in advance of the review. These papers must include:
  - the governing body's decision; o the parents' application for a review; and
  - any policies or documents that the governing body was required to have regard to in making their decision.
- Give all parties details of those attending and their role, once the position is clear.
- Attend the review and ensure that minutes are produced in accordance with instructions from the panel.
- Arrange a venue for hearing the review.
- Have an up to date understanding of development in case law which are relevant to exclusion, in addition to the training required by law.

No Governor, employee of the Academy or person who has had any connection with the Academy or with the excluded student or with the incident leading to the exclusion, shall serve on the Review Panel. The members of the Panel will be people with experience in education in the area; at least one must be a lay member. The Academy will take every care to avoid bias or an appearance of bias.

Any appeal must be lodged in writing to the Clerk to the Independent Review Panel within 15 school days from the date the parent(s)/carer(s) receives notice of the decision. Any application made outside of the legal time frame must be rejected by the local authority / Academy Trust. The panel should meet as soon as possible but normally within 15 days of the notification of appeal.

In the event of a permanent exclusion the Local Authority will be notified promptly once the exclusion is confirmed.

### **Arranging a Review Hearing**

The letter from the Clerk to the Disciplinary Panel will inform the Parent(s)/carer(s) of their right to appeal against the decision of the Disciplinary Panel not to re-instate the permanently excluded student. The letter will give the name and contact details for the Clerk to the Review Panel (who will not be the same person as the Clerk to the Disciplinary Panel) and explain that the Parent(s)/carer(s)'s notice of appeal must be in writing and set out the grounds of appeal.

The letter will tell the parent(s)/carer(s) that the final date for lodging an appeal will be 15 school days from the date the parent(s)/carer(s) receives notice.

The day on which the parent(s)/carer(s) is given notice will be taken to be the second school day after the date of posting by registered post, or where the notice is hand-delivered, the date of delivery (unless a different date of receipt can be demonstrated). No appeal will be accepted if it is made after the final date for lodging an appeal.

The Review Panel will not reinstate students purely on minor 'technicalities' relating to prior procedure, where they are persuaded on the merits of the case that the exclusion was justified and would not otherwise direct that the student should be reinstated. The Review Panel will rather consider afresh the question of whether the student should be reinstated.

The Review Panel will meet within 15 school days of the date the parent(s)/carer(s) lodges notice of appeal.

Those entitled to attend a hearing and present their case are:

- The Parent(s)/carer(s), who may be represented by a legal or other representative.
- The Principal, who may make oral representations.
- A nominated member of the Disciplinary Panel, who may make oral representations.
- A legal or other representative of the Disciplinary Panel.

The Principal and Governing Body may also make written representations. Wherever possible, the Clerk will make available all written evidence to the panel members and the Parent(s)/carer(s) four working days in advance of the hearing. The student, if s/he or his/her Parent(s)/carer(s) so request, will be allowed to attend the hearing and speak on his/her own behalf, unless there is good reason to refuse.

### **Role of the clerk**

The Independent Review Panel will have a clerk who will serve as an independent source of advice on procedure for all parties to the appeal. The Governing Body will use its best endeavours to ensure that the clerk has some legal training and has experience in the conduct of appeal hearings. **They will not be the same person who served as a clerk to the prior Discipline Panel hearing.**

When the panel or parties withdraw in order that the panel may consider its decision, the clerk may remain with the panel, but only for the purpose of offering advice on procedure or law and recording decisions and reasons.

The clerk should:

- identify in advance of the meeting whether the student will be attending. Where an excluded student is attending the hearing, consideration should be given in advance as to the steps that will be taken to support his/her participation. If the excluded student is not attending, it should be made clear that they may feed in their views through a representative or by submitting a written statement;
- inform the parents of their right to bring a friend to the hearing;
- should also try to ascertain whether an alleged victim, if there is one, wishes to be given a voice at the review. This could be in person, through a representative or by submitting a written statement;
- seek the agreement of the panel where character witnesses are proposed;

- ensure that all written witness statements should be attributed, signed and dated, unless the Academy has good reason to wish to protect the anonymity of the witness, in which case the statement should at least be dated and labelled in a way that allows it to be distinguished from other statements;
- seek the panel's agreement in advance, having regard to a reasonable limit on numbers attending the review, if parties attending the hearing wish to bring more than one friend or representative;
- request written evidence from the Academy to circulate in advance of the meeting;
- notify the panel where requested documents have not been provided so that the panel can take a decision on whether to adjourn the hearing to allow for the documents to be provided.

### **Procedure at the hearing**

The appeal hearing will not be held at KESH Academy. The Review Panel will do everything possible to establish an atmosphere of informality where the parties can present their cases effectively.

The chair should outline the procedure to be followed and explain to all parties that the panel is independent of the school, the local authority and (in the case of an academy) the academy trust. The panel should support all parties to participate in the review and ensure that their views are properly heard. The independent review should be conducted in an accessible, unthreatening and non-adversarial manner.

It is for the panel to decide whether any witnesses should stay after giving evidence for the rest of the review, but they should not be present before giving evidence.

In the interests of fairness and transparency, care should be taken to ensure that no one, other than the clerk, is present with the panel in the absence of the other parties. This includes the SEN expert. The panel should ask everyone, apart from the clerk, to withdraw before the panel makes a decision. The clerk may stay to help the panel by referring to the notes of the meeting and providing advice on the wording of the decision letter.

In any event, the panel must always make one of three fundamental decisions: it must uphold the governing board's decision; or recommend reconsideration; or quash the decision. Where parents are not seeking reinstatement for their child, this fact should be acknowledged by the panel, but it should not affect the conduct of the panel or its decision. Recording of the panel's findings on a child's educational record and an acknowledgement by the governing board that it would be appropriate for it to offer to reinstate the pupil are both potential outcomes in these circumstances.

In the event that a panel cannot continue because it no longer has representation from each of the three categories of members required (see paragraph 98) it should, having regard to the particular circumstances and the effect on the parties, victim, and pupil/parent, adjourn to allow reasonable time for enough missing members to become available.

### **Record of the proceedings of a Review Panel**

In addition to notes taken during appeals to help the panel's decision-making process (including a record of the Discipline Committee's decision and the reasons for it) the clerk to a Review

Panel should keep brief notes of the proceedings, the attendance, the voting and the decision in such forms as the Review Panel deems appropriate.

### **After the Hearing**

The decision of the Review Panel is binding on all parties. The Review Panel will communicate its decision to all parties by the end of the second school day after the appeal hearing. Where a hearing is held on the last day of term or outside term-time, the panel will notify all parties by the end of the second working day after the conclusion of the hearing. Following the review the panel must issue written notification to all parties without delay. This notification must include:

- the panel's decision and the reasons for it;
- where relevant, details of any financial readjustment/payment to be made if a governing board subsequently decides not to offer to reinstate a pupil; and
- any information that the panel has directed the governing board to place on the pupil's educational record.

If the Review Panel upholds the permanent exclusion, the clerk should immediately report this to the Local Authority. The clerk should also advise the parent(s)/carer(s) to contact the Local Authority about arrangements for their child's continued education. The Principal should remove the student's name from KESH Academy's roll the day after the conclusion of the exclusion appeal. Where the Review Panel direct re-instatement they should immediately inform the Principal of their decision and specify the date on which the student must be readmitted.

Details of an exclusion may not be deleted from the student record, where an exclusion is a matter of fact. The Governing Body must, however, comply with any parent(s)/carer(s) request to append their appeal statement to the student's record. It will be for the Governing Body to decide what details of the exclusion are included in the student's school record: copies of the principal correspondence should be included and possibly the minutes of the Discipline Committee and Review Panel hearings, if the Discipline Committee and Review Panel respectively agree to this.

## **Appendix 2: Extracts from statutory guidance on exclusions**

### **The head teacher's power to exclude**

1. Only the head teacher of a school can exclude a pupil and this must be on disciplinary grounds. A pupil may be excluded for one or more fixed periods (up to a maximum of 45 school days in a single academic year), or permanently. A fixed-period exclusion does not have to be for a continuous period.
2. A fixed-period exclusion can also be for parts of the school day. For example, if a pupil's behaviour at lunchtime is disruptive, they may be excluded from the school premises for the duration of the lunchtime period. The legal requirements relating to exclusion, such as the head teacher's duty to notify parents, apply in all cases. Lunchtime exclusions are counted as half a school day for statistical purposes and in determining whether a governing board meeting is triggered.
3. The law does not allow for extending a fixed-period exclusion or 'converting' a fixed-period exclusion into a permanent exclusion. In exceptional cases, usually where further evidence has come to light, a further fixed-period exclusion may be issued to begin immediately after the first period ends; or a permanent exclusion may be issued to begin immediately after the end of the fixed period.
4. The behaviour of a pupil outside school can be considered grounds for an exclusion.
5. The head teacher may withdraw an exclusion that has not been reviewed by the governing board.
6. Any decision of a school, including exclusion, must be made in line with the principles of administrative law, i.e. that it is: lawful (with respect to the legislation relating directly to exclusions and a school's wider legal duties, including the European Convention on Human Rights and the Equality Act 2010); rational; reasonable; fair; and proportionate.
7. The head teacher must take account of their legal duty of care when sending a pupil home following an exclusion.
8. When establishing the facts in relation to an exclusion decision the head teacher 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.' This means that the head teacher should accept that something happened if it is more likely that it happened than that it did not happen.
9. Under the Equality Act 2010 (the Equality Act), schools must not discriminate against, harass or victimise pupils because of: sex; race; disability; religion or belief; sexual orientation; pregnancy/maternity; or gender reassignment. For disabled children, this includes a duty to make reasonable adjustments to policies and practices and the provision of auxiliary aids.
10. In carrying out their functions, the public sector equality duty means schools must also have due regard to the need to:

- eliminate discrimination, harassment, victimisation, and other conduct that is prohibited by the Equality Act;
- advance equality of opportunity between people who share a protected characteristic and people who do not; and
- foster good relations between people who share a protected characteristic and people who do not share it.

11. These duties need to be complied with when deciding whether to exclude a pupil. Schools must also ensure that their policies and practices do not discriminate against pupils by unfairly increasing their risk of exclusion. Provisions within the Equality Act allow schools to take positive action to deal with particular disadvantages, needs, or low participation affecting one group, where this can be shown to be a proportionate way of dealing with such issues.
12. The head teacher and governing board must comply with their statutory duties in relation to SEN when administering the exclusion process. This includes having regard to the SEND Code of Practice.
13. It is unlawful to exclude for a non-disciplinary reason. For example, it would be unlawful to exclude a pupil simply because they have additional needs or a disability that the school feels it is unable to meet, or for a reason such as: academic attainment/ability; the action of a pupil's parents; or the failure of a pupil to meet specific conditions before they are reinstated, such as to attend a reintegration meeting. However, a pupil who repeatedly disobeys their teachers' academic instructions could, be subject to exclusion.
14. 'Informal' or 'unofficial' exclusions, such as sending a pupil home 'to cool off', are unlawful, regardless of whether they occur with the agreement of parents or carers. Any exclusion of a pupil, even for short periods of time, must be formally recorded.
15. Maintained schools have the power to direct a pupil off-site for education to improve their behaviour. A pupil at any type of school can also transfer to another school as part of a 'managed move' where this occurs with the consent of the parties involved, including the parents and the admission authority of the school. However, the threat of exclusion must never be used to influence parents to remove their child from the school.

### **The head teacher's duty to inform the governing body and the local authority about an exclusion**

1. The head teacher must, without delay, notify the governing body and the local authority of:
  - a permanent exclusion (including where a fixed period exclusion is made permanent);
  - exclusions which would result in the pupil being excluded for more than five school days (or more than ten lunchtimes) in a term; and
  - exclusions which would result in the pupil missing a public examination or national curriculum test.
2. The head teacher must also notify the local authority and governing board once per term of any other exclusions not already notified.
3. Notifications must include the reason(s) for the exclusion and the duration of any fixed-period exclusion.

4. In addition, within 14 days of a request, a governing board must provide to the Secretary of State and (in the case of maintained schools and PRUs) the local authority, information about any exclusions within the last 12 months.
5. For a permanent exclusion, if the pupil lives outside the local authority area in which the school is located, the head teacher must also notify the pupil's 'home authority' of the exclusion and the reason(s) for it without delay.

### **Statutory guidance to governing bodies on providing information to parents following their consideration of an exclusion**

1. The governing body should set out the reasons for their decision in sufficient detail to enable all parties to understand why the decision was made.
2. Where relevant, it will be for schools to confirm the details of where the parents' application for an independent review panel should be sent. This is normally the clerk of the independent review panel.
3. In providing details of the role of the SEN expert, the governing body should refer to the statutory guidance provided to SEN experts.
4. Where the governing body decides to uphold an exclusion they should draw the attention of parents to relevant sources of free and impartial information that will allow them to make an informed decision on whether and, if so, how to seek a review of the decision. This information should be included in the letter notifying parents of a decision to uphold an exclusion and should include:
  - a link to this statutory guidance on exclusions: exclusion guidance;
  - a link to guidance on making a claim of discrimination to the First-tier Tribunal <http://www.justice.gov.uk/tribunals/send/appeals>;
  - a link to the Coram Children's Legal Centre: [www.childrenslegalcentre.com](http://www.childrenslegalcentre.com) 08088 020 008; and,
  - where considered relevant by the governing body, links to local services, such as Traveller Education Services or the local parent partnership ([www.parentpartnership.org.uk](http://www.parentpartnership.org.uk)).

### **The head teacher's duty to remove a permanently excluded pupil's name from the school register**

1. The governing board must ensure that a pupil's name is removed from the school admissions register if:
  - 15 school days have passed since the parents were notified of the governing board'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.
2. Where an application for an independent review panel has been made within 15 school days, the school must wait until the review has been determined, or abandoned, and until the

governing board has completed any reconsideration that the panel has recommended or directed it to carry out, before removing a pupil's name from the register.

3. Where a pupil's name is removed from the school register and a discrimination claim is subsequently made, the First-tier Tribunal or County Court has the power to direct that the pupil should be reinstated.

### **Statutory guidance to schools on marking attendance registers following exclusion**

Whilst an excluded pupil's name remains on a school's admissions register the pupil should be marked using the appropriate attendance code. Where alternative provision has been made that meets the requirements of the pupil registration regulations, and the pupil attends it, an appropriate attendance code, such as Code B (Education Off-site) or Code D (Dual Registration), should be used. Where pupils are not attending alternative provision they should be marked absent using Code E.

### **Statutory guidance to head teachers, governing bodies, independent review panel members and clerks on police involvement and parallel criminal proceedings**

1. The head teacher need not postpone taking a decision on an exclusion solely because a police investigation is underway and/or any criminal proceedings may be brought. In such circumstances, the head teacher will need to take a decision on the evidence available to them at the time.
2. Where the evidence is limited by a police investigation or criminal proceedings, the head teacher should consider any additional steps they may need to take to ensure that the decision to exclude is fair. However, the final decision on whether to exclude is for the head teacher to make.
3. Where the governing board is required to consider a reinstatement in these circumstances, it cannot postpone its meeting and must decide whether or not to reinstate the pupil on the evidence available.
4. The fact that parallel criminal proceedings are in progress should also not directly determine whether an independent review panel should be adjourned. Relevant factors for the panel to consider will include:
  - whether any charge has been brought against the pupil and, if so, what the charge is;
  - whether relevant witnesses and documents are available;
  - the likely length of delay if the hearing were adjourned and the effect it may have on the excluded pupil, the parents, any victim or the school; and
  - whether an adjournment or declining to adjourn might result in injustice.
5. Where a panel decides to adjourn, the clerk (or local authority/academy trust where a clerk is not appointed) should monitor the progress of any police investigation and/or criminal proceedings and reconvene the panel at the earliest opportunity. If necessary, the panel may adjourn more than once.

### **Review panels**

The panel must be constituted with representatives from each 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 five years, provided they have not been teachers or head teachers during this time.
- Head teachers or individuals who have been a head teacher within the last five years.

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

- are a member / director of the local authority / Academy Trust or governing body of the excluding school;
- are the head teacher of the excluding school or anyone who has held this position in the last five years;
- are an employee of the local authority / Academy Trust, or the governing body, of the excluding school (unless they are employed as a head teacher at another school);
- have, or at any time have had, any connection with the local authority / Academy Trust; school; parents or pupil; or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their impartiality (though an individual must not be taken to have such a connection simply because they are a head teacher at another school); or
- have not had the required training within the last two years.

Academy Trust must ensure that all panel members and clerks have received training within the two years prior to the date of the review. This training must have covered:

- 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 of a review panel;
- the role of the clerk to a review panel;
- the duties of head teachers, governing bodies and the panel under the Equality Act 2010; and
- 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.