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POLICY DOCUMENT

Suspensions and Exclusions Policy

ST JOHN BOSCO CATHOLIC ACADEMY

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SJBCA Suspensions and Exclusions Policy

Part One:
MAC ethos and values, policy introduction and preventative measures to school exclusion

SJBCA Ethos
St John Bosco Catholic Multi Academy recognises that the common good requires social conditions that allow all people to achieve their full human potential and realise their human dignity. Central to this is the need for strong relationships rooted in the love and example of Jesus Christ. Our schools must provide a broad and balanced Catholic education which will help children and young people grow to their full God-given potential. The curriculum, ethos and culture must pay full regard to the formation of the whole person so that:

'all may attain their eternal destiny and at the same time promote the common good of society. Children and young persons are therefore to be cared for in such a way that their physical, moral and intellectual talents may develop in a harmonious manner, so that they may attain a greater sense of responsibility and a right use of freedom, and be formed to take an active part in social life'

Code of Canon Law, Canon 795.
Members of the local governing body and staff aim to create a positive and nurturing learning environment in each school by:

- Following a whole school approach to positive behaviour and discipline with clear guidelines and consistency in the use of rewards and sanctions, underpinned by the Catholic values ethos of the school.
- Building self-esteem, self-discipline and positive relationships based on mutual respect and the example of Jesus Christ.
- Ensuring everyone is treated equally and fairly, promoting the equal opportunities policy regarding the 9 protected characteristics in the Equality Act (2010)

- Supporting staff in their classroom management by ensuring and assuring a consistent and fair approach to positive and negative behaviour.
- Using behaviour tracking, recording and monitoring systems to enable timely intervention and support where needed.
- Using a variety of innovative and creative intervention strategies to overcome barriers to learning.
- Working with a diverse range of outside agencies and professionals to ensure the needs of all children and young people are met.
- Providing a safe, nurturing environment free from disruption, violence, bullying, intimidation and any form of harassment.
- Encouraging, promoting and facilitating a positive, trusting relationship with parents and carers to develop a shared approach to their child's education which involves them in the implementation of all aspects of this and other relevant policies.

SJBCA Values

We nurture the unique God-given talents of every individual, providing a quality, distinctively Catholic education to our diverse community.

Our core values are inspired by Catholic Social Teaching and are rooted in the person and teaching of Jesus Christ as the model for human excellence.
Our relationships and daily dealings with each other should be characterised by:

- Care for each other
- Compassion
- Trust and respect for the dignity and value of each individual
- Stewardship of the earth
- Solidarity and subsidiarity: a commitment to stand with each other in support of each other

Each school has its own set of values pertinent to each community. School values are rooted in the MAC values and the Catholic Schools Pupil Profile.

Introduction to the Suspensions and Permanent Exclusions Policy

Good behaviour and conduct in each of our MAC schools is essential to ensure that all pupils and students benefit from the opportunities provided by their Catholic education at St John Bosco MAC.

The MAC recognises that, **as an absolute last resort** when all other reasonably practicable alternatives have been fully explored, school exclusions, managed moves and off-site direction are behaviour management tools for principals and can be used, with careful thought, to establish high standards of behaviour in schools and maintain the safety of school communities.

For the vast majority of our pupils and students, suspensions and permanent exclusions will **never** be necessary, as a range of **other strategies** can manage behaviour. However, if all other reasonably practicable approaches towards

behaviour management have been reasonably assessed, then suspensions and permanent exclusions may occasionally be necessary as a **last resort**. This is to ensure that other pupils, students and teaching staff are protected from disruption and can learn in safe, calm, and supportive environments.

In line with government guidance, our MAC does not adopt a 'no exclusion' policy as an end in itself. 'No exclusion' policies can lead to perverse incentives for schools not to exclude even when exclusion may be a way for a pupil to access Alternative Provision which will help ensure an excluded pupil remains engaged in education.

In some cases, a 'no exclusion' policy can present safeguarding issues and expose staff, pupils and students to unreasonable risks. Instead, in our MAC our schools work consistently to create environments where school exclusions are not necessary because pupil and student behaviour does not require it.

This work is fully supported by the SJBCA Central Executive Team, Directors and Local Governors.

This policy is a companion to the SJBCA Behaviour Policy, which aims to create a school culture with high expectations of behaviour. The SJBCA behaviour policy and each school's local behaviour procedures aim to ensure and support high standards of behaviour. Therefore, this policy is only ever be necessary when strategies, practices and interventions set out within the Behaviour Policy have not been successful in improving a pupil or student's behaviour or the use of more significant interventions or sanctions is required.

Any form of exclusion – for any length of time – is a very serious consequence. Denying a pupil or student access to the school is only everconsidered as a last resort. When a principal is considering any kind of exclusion it is vital they access support and discuss their potential actions with a member of MAC Central Executive Team. Only the principal of a school can exclude a child – but in our MAC we believe such a serious decision can only be made after significant reflection, seeking the counsel of others and ensuring all reasonably practicable alternatives have been rigorously considered..

Avoiding Exclusion

Principals, through their regular contact with the MAC Central Executive Team, should make known any pupils or students whose behaviour is causing concern. This is so that appropriate advice, support and monitoring can be provided at MAC level. The CET will provide as much support as possible to principals and schools in order to ensure high standards of behaviour and avoid any form of exclusion wherever possible.

Background to this policy

This policy refers to the legislation that governs the suspension and permanent exclusion of pupils and students from all maintained schools (including special schools), pupil referral units (PRUs), academy schools (including free schools, special schools, studio schools and university technology colleges) and alternative provision academies (including alternative provision free schools) in England.

This policy must be read and used alongside 'Suspensions and Permanent Exclusions from Maintained Schools, Academies and Pupil Referral Units in

England, including pupil movement: Guidance for Maintained Schools, Academies and Pupil Referral Units in England. DFE September 2023. It also includes the use of behavioural strategies such as managed moves and directing pupils off-site to improve behaviour to help prevent a suspension or permanent exclusion.

The policy also references the statutory guidance to which principals, governing boards, local authorities, academy trusts, independent review panel (IRP) members and special educational needs (SEN) experts, social workers and Virtual School Heads (VSHs) must have regard when carrying out their functions in relation to suspension and permanent exclusions.

Clerks to Independent Review Panels (IRPs) must also be well-versed in this guidance. Where relevant, this policy refers to other government guidance in areas such as behaviour, safeguarding, SEN and equalities law, but is not intended to provide detailed guidance on these issues. This policy and the government DFE guidance it refers to should not be taken as a complete or definitive statement of the law nor as a substitute for the relevant legislation. **Legal advice should be sought as appropriate.**

This policy should not be read in isolation. It is important for to consider the following policies and DFE guidance:

- SJBCA Behaviour Policy
- Schools' local behaviour procedures
- DFE Behaviour in Schools guidance;
- DFE Keeping Children Safe in Education;
- DFE Mental health and behaviour in schools;
- DFE Understanding Your Data: a guide for school governors and academy trustees;
- and other relevant advice and guidance as part of their approach to using school suspensions and permanent exclusions well.

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;
- 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

Duties under the Education and Inspections Act 2006

Under the Education and Inspections Act 2006, **principals** must determine measures to be taken with a view to:

- promoting, among pupils, self-discipline, and proper regard for authority,

- encouraging good behaviour and respect for others on the part of pupils and, in particular, preventing all forms of bullying among pupils,
- securing that the standard of behaviour of pupils is acceptable,
- securing that pupils complete any tasks reasonably assigned to them in connection with their education, and
- otherwise regulating the conduct of pupils.

Permanent exclusions can be used in relation to these duties only **when they are absolutely necessary, as a last resort, when all other possible alternatives have been explored and where appropriate, exhausted.**

Duties under the Equality Act 2010 and Children and Families Act 2014

Under the Equality Act 2010 (the Equality Act) and the Equality Act 2010 (advice for schools), schools must not discriminate against, harass, or victimise pupils Ie of:

- sex; race; disability; religion or belief; sexual orientation; pregnancy/maternity; or gender reassignment. For disabled children,Iincludes a duty to make reasonable adjustments to any provision, criterion Iractice which puts them at a substantial disadvantage, and the provision of auxiliary aids and services.

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 relevant protected characteristic and people who do not; and
- foster good relations between people who share a relevant protected characteristic and people who do not share it. The 'relevant protected characteristics' in this context are the characteristics mentioned above.

Age is also a relevant protected characteristic, but not when carrying a function which provides education, benefits, facilities, or services to pupils.

These duties need to be complied with when deciding whether to exclude a pupil. Schools must also ensure that any provision, criterion, or practice does not discriminate against pupils by unfairly increasing their risk of exclusion. For example, if reasonable adjustments have not been made for a pupil with a disability that can manifest itself in breaches of school rules if needs are not met, a decision to exclude may be discriminatory.

The governing board must also comply with their statutory duties in relation to pupils with Special Educational Need (SEN) when administering the exclusion process, including (in the case of the governing board of relevant settings) using their 'best endeavours' to ensure the appropriate special educational provision is made for pupils with SEN and (for all settings) having regard to the Special Educational Need and Disability (SEND) Code of Practice.

Factors to consider before making a last resort decision to exclude

Before considering any form of exclusion principals must contact the SJBCA Central Executive Team to explore preventative measures to school exclusion. Principals must make early contact with the Central Executive Team about any child who is remotely at risk of exclusion so that all reasonably practicable preventative and supportive measures can be explored.

The very best Alternative Provision (AP) can be important co-experts in managing behaviour and providing alternatives to exclusion. This could include **outreach support** for pupils and students in mainstream schools and offering **short-term places** to pupils who need a **time limited intervention away from their mainstream school.** Schools should work with **high quality AP providers** to ensure a continuum of support is available for pupils for whom good behaviour cultures and policies are not working.

Preventative measures to school exclusion

In addition to the strategies set out in initial intervention, (*page 29 of the DFE Behaviour in Schools guidance*), principals should also consider the following:

- a) an off-site direction (temporary measure that maintained schools and academies for similar purposes can use) or
- b) managed moves (permanent measure) as preventative measures to exclusion.

Any use of AP should be based on an understanding of the **support** a child or young person needs in order to improve their behaviour, as well as any SEND or health needs. **Off-site direction may only be used as a way to improve future behaviour and not as a sanction or punishment for past misconduct.** Off-site direction should only be used where in-school interventions and/or outreach have been unsuccessful or are deemed inappropriate and should only be used to arrange a temporary stay in AP.

The following individuals must have regard to the *Alternative Provision: Statutory guidance for local authorities, headteachers and governing bodies*

- a local authority arranging suitable education under section 19 of the Education Act 1996;
- the governing body of a maintained school making or reviewing an off-site direction under section 29A; and
- the governing body or academy trust of a maintained school, academy school or AP academy arranging suitable education for a suspended pupil under section 100 of the Education and Inspections Act 2006.

The nature of the intervention, its objectives, and the timeline to achieve these objectives should be clearly defined and agreed with the provider upfront. The plan should then be frequently monitored and reviewed. Pupils and students must continue to receive a broad and balanced education, and this will support reintegration into mainstream schooling.

Off-site direction

Off-site direction is when a governing board of a maintained school requires a pupil to attend another education setting to improve their behaviour. **Whilst the legislation does not apply to academies, they can arrange off-site provision for such purposes under their general powers.**

Where interventions or targeted support have not been successful in improving a pupil or student's behaviour, off-site direction should be used to arrange time-limited placements at an AP or another mainstream school. **During the off-site direction to another school, pupils must be dual registered.** Code B should be used for any off-site educational activity, if the provision is an approved educational activity that does not involve the pupil being registered at any other school.

When possible, in-school interventions or targeted support from AP schools should be used to meet a pupil's individual needs and circumstances – whether behavioural or special educational. Depending on the individual needs and circumstances of the pupil, off-site direction into AP can be full-time or a combination of part-time support in AP and continued mainstream education. A proposed maximum period of time should be discussed and agreed upon as part of the planning phase for an off-site direction.

As part of planning, alternative options should be considered once the time limit has been reached, including a managed move on a permanent basis (if a pupil is in a mainstream school) upon review of the time-limited placement. The governing board must comply with the Education (Educational Provision for Improving Behaviour) Regulations 2010 and must show regard to the Alternative Provision: Statutory guidance for local authorities, headteachers and governing bodies. Whilst the alternative provision guidance section does legally apply to maintained schools, **academy trusts are also encouraged to follow this guidance.**

The statutory guidance covers objectives and timeframes with appropriate monitoring of progress. For maintained schools, the governing board must ensure that parents (or the pupil if 18 or older) (and the local authority if the pupil has an Education, Health and Care (EHC) plan are notified in writing and provided with information about the placement as soon as practicable after the direction has been made and no later than two school days before the relevant day. Parents (or pupils aged 18 or over) and, where the pupil has an EHC plan, the local authority can request, in writing, that the governing board hold a review meeting. When this happens, governing boards must comply with the request as soon as reasonably practicable, unless there has already been a review meeting in the previous 10 weeks.

The length of time a pupil spends in another mainstream school or AP and the reintegration plan must be kept under review by the governing body, who must hold review meetings at such intervals as they, having regard to the needs of the pupil, consider appropriate, for as long as the requirement remains in effect. Not later than six days before the date of any review meeting, a governing body must give a written invitation to parents (or the pupil if 18 or older) (and the local authority if the pupil has an EHC plan) to attend the review meeting, or to submit in writing before the date of the meeting their views as to whether off-site direction should continue to have effect.

The governing body must ensure, insofar as is practicable, that any review meeting is convened on a date, and at a time, that is suitable for the parent. The governing body must keep the placement under review for as long as the requirement remains in effect and must decide following each review meeting as to whether the requirement should continue to have effect and, if so, for what period of time. The meeting should include arrangements for reviews, including how often the placement will be reviewed, when the first review will be and who should be involved in the reviews. For example, review meetings should take place between the school, parents, the pupil, and other agencies e.g., a pupil's social worker, Child and Adolescent Mental Health Services (CAMHS), Multi-Agency Safeguarding Hubs (MASH) and Youth Justice Teams, and the local authority (if a pupil has an EHC plan) to establish agreed monitoring points to discuss the pupil's ongoing behaviour. These reviews should be recorded in writing and be frequent enough to provide assurance that the off-site direction is achieving its objectives via monitoring points.

The governing body must give written notification of their decision as to whether the requirement to continue the placement should continue and if so, for what period of time including the reasons for it to the parent no later than six days after the date of the review meeting. To support a pupil with reintegration into their referring school, the focus of intervention whilst off-site should remain on ensuring that a pupil continues to receive a broad and balanced curriculum whilst any inappropriate behaviours which require intervention are being addressed. If a pupil with a disability or SEN has been moved off-site, the duties under the Equality Act 2010 and the Children and Families Act 2014 continue to apply (for example, to make reasonable adjustments or to put support in place to meet SEN). The length of time a pupil spends in another mainstream school or AP will depend on what best supports the pupil's needs and potential improvement in behaviour.

Managed moves

A managed move is used to initiate a process which leads to the transfer of a pupil or student to another mainstream school permanently. Managed moves should be voluntary and agreed with all parties involved, including the parents and the admission authority of the new school.

If a temporary move needs to occur to improve a pupil's behaviour, then off-site direction should be used. Managed moves should only occur when it is in the pupil's best interests. Where a pupil has an EHC plan, the relevant statutory duties on the new school and local authority will apply. If the current school is contemplating a managed move, it should contact the authority prior to the managed move. If the local authority, both schools and parents are in agreement that there should be a managed move, the local authority will need to follow the statutory procedures for amending a plan.

Managed moves should be offered as part of a planned intervention. The original school should be able to evidence that appropriate initial intervention has been carried out, including, where relevant, multi-agency support, or any statutory assessments were done or explored prior to a managed move.

The managed move should be preceded by information sharing between the original school and the new school, Iing data on prior and current attainment,

academic potential, a risk assessment and advice on effective risk management strategies. It is also important for the new school to ensure that the pupil is provided with an effective integration strategy.
If a parent believes that they are being pressured into a managed move or is unhappy with a managed move, they can take up the issue through the school's formal complaints procedure with the governing board. Within the school inspections framework, under leadership and management, Ofsted will consider any evidence found of a parent being pressured into a managed move that has resulted in off-rolling and is likely to judge a school as inadequate on the basis of such evidence.

Pupils with disabilities and Special Educational Needs (SEN) including those with Education, Health and Care plans (EHC plans)

The Equality Act 2010 requires schools to make reasonable adjustments for disabled pupils. This duty can, in principle, apply both to the suspensions and permanent exclusions process and to the disciplinary sanctions imposed. Under the Children and Families Act 2014, governing boards of relevant settings must use their 'best endeavours' to ensure the appropriate special educational provision is made for pupils with SEN, which will include any support in relation to behaviour management that they need because of their SEN. Schools should engage proactively with parents in supporting the behaviour of pupils with additional needs.
Where a school has concerns about the behaviour, or risk of suspension and permanent exclusion, of a pupil with SEN, a disability or an EHC plan it should, in partnership with others (Iing where relevant, the local authority), consider what additional support or alternative placement may be required. This should involve assessing the suitability of provision for a pupil's SEN or disability. Where a pupil has an EHC plan, schools should contact the local authority about any behavioural concerns **at an early stage** and consider requesting an **early annual review prior to making the decision to suspend or permanently exclude.** For those with SEN but without an EHC plan, the school should review, with external specialists as appropriate, whether the current support arrangements are appropriate and what changes may be required. This may provide a point for schools to request an EHC assessment or a review of the pupil's current package of support.

Pupils who have a social worker, including looked-after children, and previously looked-after children

For the majority of children who have a social worker, this is due to known safeguarding risks at home or in the community: over half are in need due to abuse or neglect. For children with a social worker, education is an important protective factor, providing a safe space for children to access support, be visible to professionals and realise their potential. When children are not in school, they miss the protection and opportunities it can provide, and become more vulnerable to harm. However, principals should balance this important reality with the need to ensure calm and safe environments for all pupils and staff, so should devise strategies that take both of these aspects into account.

Where a pupil has a social worker, e.g., because they are the subject of a Child in Need Plan or a Child Protection Plan, and they are at risk of suspension or permanent exclusion, the principal should inform their social worker, the Designated Safeguarding Lead (DSL) and the pupil's parents to involve them all as early as possible in relevant conversations.

Where a looked-after child (LAC) is likely to be subject to a suspension or permanent exclusion, the Designated Teacher (DT) should contact the local authority's Virtual School Headteacher (VSH) as soon as possible. The VSH, working with the DT and others, should consider what additional assessment and support need to be put in place to help the school address the factors affecting the child's behaviour and reduce the need for suspension or permanent exclusion. Where relevant, the school should also engage with a child's social worker, foster carers, or children's home workers. All looked-after children should have a Personal Education Plan (PEP) which is part of the child's care plan or detention placement plan.

This should be reviewed every term and any concerns about the pupil's behaviour should be recorded, as well as how the pupil is being supported to improve their behaviour and reduce the likelihood of exclusion. Where previously looked-after children face the risk of being suspended or permanently excluded, the school should engage with the child's parents and the school's DT. The school may also seek the advice of the VSH on strategies to support the pupil.

SJBCA Suspensions and Exclusions Policy
Part Two

Procedures for principals and governors when a last resort decision to suspend or exclude has been made

The principal's power to suspend or permanently exclude for academy principals

The government supports principals in using suspension and permanent exclusion as a sanction **when warranted** as part of creating a calm, safe, and supportive environment in which pupils can learn and thrive. To achieve this, suspension and permanent exclusion are **sometimes** a necessary part of a functioning system, where it is accepted that not all pupil or student behaviour can be amended or remedied by pastoral processes, or consequences within the school.

Contacting the MAC Central Executive Team before making the decision to include

Principals MUST contact the MAC Central Executive Team prior to making ANY kind of exclusion or suspension (even for a short period such as a lunchtime) so that there has been some support, counsel and supervision to explore alternatives prior to the principal making any decision to suspend or exclude a pupil or student.

The principal's powers to use exclusion.
Only the principal of the school can suspend or permanently exclude a pupil or student on disciplinary grounds. A pupil or student may be suspended for one or more fixed periods **(up to a maximum of 45 school days in a single academic year)**, or **permanently excluded**.

A pupil or student's behaviour outside school can be considered grounds for a suspension or permanent exclusion. Any decision of a principal, including suspension or permanent 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 suspensions and permanent exclusions and a school's wider legal duties); reasonable; fair; and proportionate.

When establishing the facts in relation to a suspension or permanent exclusion decision the principal 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 principal should accept that something happened **if it is more likely that it happened than that it did not happen**.

See Appendix F for statutory information on exclusions where there are parallel police / criminal proceedings.

The principal must take account of their legal duty of care when sending a pupil or student home following an exclusion.
Principals should also take the pupil or student's views into account, considering these in light of their age and understanding, before deciding to exclude, unless it would not be appropriate to do so. They should inform the pupil about how their views have been factored into any decision made. Where relevant, the pupil should be given support to express their view, including through advocates such as parents or, if the pupil has one, a social worker. Whilst an exclusion may still be an appropriate sanction, the principal should also take account of any contributing factors identified after an incident of misbehaviour has occurred and consider paragraph 45 of the DFE *Behaviour in Schools* guidance.

Suspension
A suspension, where a pupil or student is temporarily removed from the school, is a last resort behaviour management tool that should be set out within the school's **local behaviour procedures.**
A pupil or student may be suspended for one or more fixed periods (up to a maximum of 45 school days in a single academic year). A suspension does not have to be for a continuous period. A suspension may be used to provide a clear signal of what is unacceptable behaviour as part of the school's behaviour policy and show a pupil or student that their current behaviour is putting them at risk of permanent exclusion. Where suspensions are becoming a regular occurrence for a pupil or student, principals and schools should consider whether suspension

alone includes an effective sanction for the pupil or student and whether additional strategies need to be put in place to address behaviour. It is important that during a suspension, pupils and students still receive their education. Principals should take steps to ensure that work is set and marked for pupils and students during the first five school days of a suspension. This can include utilising any online pathways such as Oak National Academy.
The school's legal duties to pupils with disabilities or special educational needs remain in force, for example, to make reasonable adjustments in how they support disabled pupils during this period. Any time a pupil or student is sent home due to disciplinary reasons and asked to log on or utilise online pathways should always be recorded as a suspension. A suspension can also be for parts of the school day. For example, if a pupil or student's behaviour at lunchtime is disruptive, they may be suspended from the school premises for the duration of the lunchtime period. The legal requirements relating to the suspension, such as the principal's duty to notify parents, apply in all cases.
Lunchtime suspensions are counted as half a school day in determining whether a governing board meeting is triggered. The law does not allow for extending a suspension or 'converting' a suspension into a permanent exclusion. In exceptional cases, usually where further evidence has come to light, a further suspension 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 suspension.

Permanent Exclusion
A permanent exclusion is an exceptionally serious, last resort consequence when a pupil or student is no longer allowed to attend a school (unless the pupil is reinstated). The decision to exclude a pupil permanently should 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 such as staff or pupils in the school.

For any permanent exclusion, principals should take reasonable steps to ensure that work is set and marked for pupils during the first five school days where the pupil will not be attending alternative provision. Any appropriate referrals to support services or notifying key workers (such as a pupil or student's social worker) should also be considered.

Cancelling exclusions
The principal may cancel any exclusion that has already begun, **but this should only be done where it has not yet been reviewed by the governing board.** Where an exclusion is cancelled, then:

- Parents, the governing board, and the LA should be notified without delay and, if relevant, the social worker and VSH;
- Parents should be offered the opportunity to meet with the headteacher to discuss the circumstances that led to the exclusion being cancelled;

- Schools should report to the governing board once per term on the number of exclusions which have been cancelled. This should include the circumstances and reasons for the cancellation enabling governing boards to have appropriate oversight and;
- The pupil should be allowed back into school.

Reintegration after a suspension or off-site direction

Schools should support pupils and students to reintegrate successfully into school life and full-time education following a suspension or period of off-site direction (alternative provision). They should design a **reintegration strategy** that offers the pupil or student a **fresh start**; helps them understand the impact of their behaviour on themselves and others; teaches them to how meet the high expectations of behaviour in line with the school culture; fosters a renewed sense of belonging within the school community; and builds engagement with learning. The reintegration strategy should be clearly communicated at a **reintegration meeting before or at the beginning of the pupil's return to school**.

During a reintegration meeting, the school should communicate to the pupil that they are valued, and their previous behaviour should not be seen as an obstacle to future success.

Where possible this meeting should include the pupil's parents. However, it is important to note that a pupil should not be prevented from returning to a mainstream classroom if parents are unable or unwilling to attend a reintegration meeting.

To ensure ongoing progress, the strategy should be regularly reviewed and adapted where necessary throughout the reintegration process in collaboration with the pupil, parents, and other relevant parties. Where necessary, schools should work with relevant staff and multi-agency organisations, such as teachers, pastoral staff, mentors, social workers, educational psychologists or other agencies, to identify if the pupil has any SEND and/or health needs.

A part-time timetable should not be used to manage a pupil's behaviour and must only be in place for the shortest time necessary. Any pastoral support programme or other agreement should have a time limit by which point the pupil is expected to attend full-time, either at school or alternative provision. There should also be formal arrangements in place for regularly reviewing it with the pupil and their parents. **In agreeing to a part-time timetable, a school has agreed to a pupil being absent from school for part of the week or day and therefore must treat absence as authorised.**

Schools can use a range of measures to enable the pupil's successful reintegration which can include, but are not limited to:

- Maintaining regular contact during the suspension or off-site direction and welcoming the pupil back to school;
- Daily contact with a designated pastoral professional in-school;
- Use of a report card with personalised targets leading to personalised rewards;

- Ensuring the pupil follows an equivalent curriculum during their suspension or off-site direction or receives academic support upon return to catch up on any lost progress;
- Planned pastoral interventions;
- Mentoring by a trusted adult or a local mentoring charity;
- Regular reviews with the pupil and parents to praise progress being made and raise and address any concerns at an early stage;
- Informing the pupil, parents and staff of potential external support.

Setting a clear process for exclusions

Principals, with the support of the MAC Governance Lead, should ensure the following, when setting a clear process for exclusions:

- adopting a reliable method for monitoring the 45-day suspension rule, including suspensions received from other schools **and reporting this to governors**
- ensuring there is a formal process for informing parents, social worker (where relevant), governing board and local authority, clearly setting out all reasons for the exclusion; this may involve using local authority guidance / procedures where these exist
- providing up-to-date links to sources of impartial advice for parents **as a matter of routine**
- reintegrating suspended or permanently excluded pupils and supporting pupils' future behaviour **through a clear, systematic reintegration process**
- ensuring a formal process for arranging, at short notice, suitable full-time alternative education for pupils receiving suspensions over five school days, **working with the local authority and MAC to achieve this where appropriate.**

Reasons and recording exclusions

The reasons below are *examples* of the types of circumstances that *may* warrant a suspension or permanent exclusion.

- Physical assault against a pupil
- Physical assault against an adult
- Verbal abuse or threatening behaviour against a pupil
- Verbal abuse or threatening behaviour against an adult
- Use, or threat of use, of an offensive weapon or prohibited item that has been prohibited by a school's behaviour policy
- Bullying
- Racist abuse
- Abuse against sexual orientation or gender reassignment
- Abuse relating to disability

This list is non-exhaustive and is intended to offer examples rather than be complete or definitive.
The DFE collects data on suspensions and permanent exclusions from all state-funded schools via the termly school census. Schools must provide information via the school census on pupils or students subject to any type of suspension or permanent exclusion in the previous two terms. Up to three reasons can be recorded for each suspension or permanent exclusion (where applicable).

Off-rolling and unlawful exclusions
Telling or forcing a pupil to leave school, or not allowing them to attend school, is a suspension (if temporary) or permanent exclusion (if permanent). Whenever a pupil is made to leave school, or forbidden from attending school, on disciplinary grounds, this must be done in accordance with the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 and with regard to relevant parts of DFE Suspension and Permanent Exclusion (September 2022).

Short-period exclusion
Suspending a pupil for a short period of time, such as half a day, is permissible, however, the formal suspension process must be followed. Each disciplinary suspension and permanent exclusion must be confirmed to the parents in writing with notice of the reasons for the suspension or permanent exclusion. **Any exclusion of a pupil, even for short periods, must be formally recorded. It would also be unlawful to exclude a pupil simply because they have SEN or a disability that the school feels it is unable to meet,** or for a reason such as: academic attainment/ability; or the failure of a pupil to meet specific conditions before they are reinstated, such as to attend a reintegration meeting.
If any of these **unlawful exclusions** are carried out and lead to the deletion of a pupil's name from the register, this is known as **'off-rolling'**. An informal or unofficial exclusion, such as sending a pupil home 'to cool off', **is unlawful when it does not follow the formal school exclusion process and regardless of whether it occurs with the agreement of parents.** A further example of off-rolling would be exercising undue influence over a parent to remove their child from the school under the threat of a permanent exclusion and encouraging them to choose Elective Home Education or to find another school place. If a parent feels pressured into electively home educating their child or that the suspension or permanent exclusion procedures have not been followed, **they can follow the school's complaints procedure with the governing board**. Ofsted considers any evidence of off-rolling and is likely to judge a school as **inadequate** if there is evidence that pupils have been removed from the school roll without a formal permanent exclusion or by the school encouraging a parent to remove their child from the school, and leaders have taken insufficient action to address this.

Safeguarding, including DFE guidance concerning pupils who have abused another pupil (commonly known as child-on child abuse)
If there is an ongoing safeguarding investigation (whether that includes a criminal investigation or not) that may result in the permanent exclusion of a pupil or if a pupil has been reinstated following a governing board review, it is likely that there

will be complex and difficult decisions that need to be made. It is important that these decisions are made alongside a school's duty to safeguard and support children and their duty to provide an education. Schools have a statutory duty to make arrangements for safeguarding and promoting the welfare of their pupils and students.

As part of this duty, schools are required to have regard to guidance issued by the Secretary of State. All schools must have regard to Keeping Children Safe in Education. Furthermore, schools have a statutory duty to co-operate with safeguarding partners once designated as relevant agencies. Equally, safeguarding partners are expected to name schools as relevant agencies and engage with them in a meaningful way.

Ultimately, any decisions are for the school to make on a case-by-case basis, with the designated safeguarding lead (or a deputy) taking a leading role and using their professional judgement, supported by other agencies, such as children's social care and the police as required. Section 5 of Keeping Children Safe in Education sets out the safeguarding process for cases of reports that relate to rape or assault by penetration and those that lead to a conviction or caution: "When there has been a report of sexual violence, the designated safeguarding lead (or a deputy) should make an immediate risk and needs assessment. Where there has been a report of sexual harassment, the need for a risk assessment should be considered on a case-by-case basis." As always when concerned about the welfare of a child, the best interests of the child should come first. In all cases, schools should follow general safeguarding principles as found in Keeping Children Safe in Education.

The principal's duty to inform parties about an exclusion

To ensure that a child receives the correct support and protection during a suspension or permanent exclusion, it is important that those responsible for their care are promptly informed when exclusions occur or there is a risk of them occurring. As well as communicating with the child where relevant throughout the exclusion process, this section sets out how and when schools should and must share information with parents, social workers, VSH, local authorities, MAC Executive Leaders and governing boards.

The MAC requirement for principals to inform the MAC Central Executive Team about any suspension or exclusion decision immediately prior to contacting parents

As set out earlier, principals must contact the MAC Central Executive Team for a supportive discussion **before** deciding to suspend or permanently exclude a pupil or student. Should a principal subsequently decide to suspend or permanently exclude they MUST make this decision known to the CET immediately prior to contacting the pupil or student's parents.

Duty to inform parents about an exclusion

Whenever a principal suspends or permanently excludes a pupil they must, without delay, notify parents of the period of the suspension or permanent exclusion and the reason(s) for it. They must also, without delay, after their decision, provide parents with the following information **in writing**:

- the reason(s) for the suspension or permanent exclusion;
- the period of a suspension or, for a permanent exclusion, the fact that it is permanent;
- parents' right to make representations about the suspension or permanent exclusion to the governing board and how the pupil may be involved in this;
- how any representations should be made; and
- where there is a legal requirement for the governing board to consider the suspension or permanent exclusion, that parents or a pupil if they are 18 years old have a right to attend a meeting, to be represented at that meeting (at their own expense) and to bring a friend.
- Where a suspended or permanently excluded pupil is of compulsory school age the principal must also notify the pupil's parents of the days on which they must ensure that the pupil is not present in a public place at any time during school hours. These days are the first five school days of a suspension or permanent exclusion (or until the start date of any full-time alternative provision or the end of the suspension where this is earlier). Any parent who fails to comply with this duty without reasonable justification commits an offence and may be given a fixed penalty notice or be prosecuted. The principal must notify the parents of the days on which their duty applies without delay and, at the latest, by the end of the afternoon session on the first day of the suspension or permanent exclusion.

Written notification of the information above can be provided by delivering it directly to the parents, leaving it at their usual or last known home address, or posting it to that address. Notices can be given electronically if the parents have given written agreement for this kind of notice to be sent in this way.
If alternative provision is being arranged, then the following information must be included with this notice where it can reasonably be found out within the timescale:

- the start date for any provision of full-time education that has been arranged for the child during the suspension or permanent exclusion;
- the start and finish times of any such provision, including the times for morning and afternoon sessions where relevant;
- the address at which the provision will take place; and
- 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 on the first day of the suspension or permanent exclusion, it may be provided in a subsequent notice, but it must be provided without delay and 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 a suspension or permanent exclusion, in which case the information can be provided with less than 48 hours' notice with parents' consent. The failure of a principal to give notice of the information above by the required time does not relieve the headteacher of the duty to serve the notice. A notice is not made invalid solely because it has not been given by the required time. If a child is suspended again following their original suspension, or is subsequently permanently excluded, the headteacher must inform parents and where relevant, the pupil's social worker or local authority if the pupil has an EHCP, without delay and issue a new exclusion notice to parents and the social worker.

Informing parents about an exclusion

For notifications as above, although this must not delay notification, **notification should be in person or by telephone in the first instance** as this would allow parents to ask any initial questions or raise concerns directly with the principal. Principals should consider the following:

- Has the school spoken to the parents (and when appropriate, the child's social worker) to ensure they fully understand the type/scale of the incident?
- Has the school considered how to communicate accessibly and clearly, including whether parents may have particular communication needs relating to a disability or having English as an additional language (EAL)?
- Has the school provided sufficient details in the suspension or permanent exclusion notice letter on the reasons for the suspension or permanent exclusion?
- Does the notice contain all the required information as set out in part six of the suspension and permanent exclusion guidance?
- Has the school informed parents (and when appropriate, the pupil's social worker or the local authority if a pupil has an EHCP) whether their pupil will be able to sit any national curriculum test(s) or public examination(s) occurring during the suspension or permanent exclusion?
- When several suspensions have been issued in a term, has the school informed parents of their right of representation to the governing board?
- Letter templates might be available from the local authority.

When notifying parents about a suspension or permanent exclusion, the principal should set out what arrangements have been made to enable the pupil or student to continue their education prior to the start of any alternative provision or the pupil's return to school, in line with legal requirements and guidance. Effective methods for providing the information may include email or text message, giving the notice directly to the parents, or sending the information home with the suspended or permanently excluded pupil or student. Where information is sent home with the pupil, the principal should send a duplicate copy by an alternative method or confirming that the information has been received.

When notifying parents about a suspension or permanent exclusion, the principal should draw attention to relevant sources of free and impartial information. This information should include:

- Every local area has a SENDIAS service who provide information, advice and support to children and young people with SEND, including on exclusions. Every exclusion letter should include details of the local service which can also be found here: https://councilfordisabledchildren.org.uk/about-us-0/networks/informationadvice-and-support-services-network
- Coram's Child Law Advice service can be accessed through their website: https://childlawadvice.org.uk/information-pages/school-exclusion/ or contacted on 0300 330 5485 from Monday to Friday, 8am – 6pm.
- ACE education run a limited service and can be reached on 0300 0115 142 on Monday to Wednesday from 10am to 1pm during term time. Information can be found on the website: http://www.ace-ed.org.uk/.
- Independent Provider of Special Education Advice (known as IPSEA – www.ipsea.org.uk) is a registered charity. It offers free and independent information, advice and support to help get the right education for children and young people with all kinds of special educational needs (SEN) and disabilities.

Informing social workers and Virtual School Heads about an exclusion

Information sharing is vital in safeguarding children and promoting their welfare, including their educational outcomes. Schools should be proactive in sharing information as early as possible to help identify, assess, and respond to risks or concerns about the safety and welfare of children. Keeping children safe in education and Working Together to Safeguard Children (2018) set out the requirements for schools and colleges about information sharing in more detail. Whenever a principal suspends or permanently excludes a pupil they must, without delay, after their decision, also notify the social worker, if a pupil has one, and the VSH, if the pupil is a Looked After Child (LAC), of the period of the suspension or permanent exclusion and the reason(s) for it. The information above (notifying parents) must be provided in writing to the local authority. Both the social worker and/or VSH, must be informed when a governing board meeting is taking place, in order to share information. The social worker and/or the VSH can attend the meeting, should they wish to do so.

Informing the governing board about an exclusion

The principal must, without delay, notify the governing board of:

- any permanent exclusion (including where a suspension is followed by a decision to permanently exclude the pupil);
- any suspension or permanent exclusion which would result in the pupil being suspended or permanently excluded for a total of more than five school days (or more than ten lunchtimes) in a term; and

- any suspension or permanent exclusion which would result in the pupil missing a public examination or national curriculum test.

When removing a pupil from the school roll, the governing board must ensure this is done under the circumstances prescribed by the Education (Pupil Registration) (England) Regulations 2006, as amended. If applicable, the pupil's name should be removed from the school roll at the appropriate time.

Informing the local authority about an exclusion

The local authority must be informed without delay of all school exclusions regardless of the length of the exclusion. For a permanent exclusion, if the pupil lives outside the local authority area in which the school is located, the principal must also notify the pupil's 'home authority' of the permanent exclusion and the reason(s) for it without delay. The principal must also inform the governing board once per term of any other suspensions of which they have not previously been notified. Notifications must include the reason(s) for the suspension or permanent exclusion and the duration of any suspension or, in the case of a permanent exclusion the fact that it is permanent.

DFE /MAC Guidance to the headteacher on informing the governing board about an exclusion

The MAC governance lead will support chairs of governors to ensure there are clear processes in place for considering suspensions and permanent exclusions, such as:

- Ensuring parents and pupils are aware of their right to consideration by the governing board
- Asking whether the governing board have taken steps to find a convenient date that the parent, other relevant parties, the local authority representative (if relevant) and the headteacher can attend, within the legal time limits
- Asking the governing board whether they have considered how to involve the pupil in the consideration process
- Ensuring all relevant documents have been collected, anonymised, if required, and provided to all parties

The principal should ensure that they have informed the governing board about reinstatement and specify the correct timescale. They should also make clear to the governing board whether the need to consider reinstatement is dependent on receiving parental representations.

The principal, supported by the MAC governance lead, should ensure a process is in place for a governing board when considering reinstatement following a permanent exclusion:

- Do governors understand the suspension and permanent exclusion process to enable a review within deadlines?

- Would governors benefit from additional training, including on behaviour management, routines, norms and consequences, disability awareness, the Equality Act 2010, the Children and Families Act 2014 and SEN provision?
- Is there a clear and timely system in place to enable parents to make representations?
- Are there up-to-date templates for notifying parents of the decision and explaining the next steps?

The governing board and local authority's duties to arrange education for excluded pupils

Governing boards and local authorities play an important role in ensuring that children who have been excluded from school receive a suitable education that facilitates their successful reintegration into education or meets their long-term needs.

The education of pupils from the sixth day of an exclusion

For a suspension of more than five school days, the governing board must arrange suitable full-time education for any pupil of compulsory school age. This provision is commonly called alternative provision and must begin no later than the sixth school day of the suspension. Where a child receives consecutive suspensions, these are regarded as a cumulative period of suspension for the purposes of this duty.

This means that if a child has more than five consecutive school days of suspension, then education must be arranged for the sixth school day of suspension, regardless of whether this is because of one decision to suspend the pupil for the full period or multiple decisions to suspend the pupil for several periods in a row.

For permanent exclusions, the local authority must arrange suitable full-time education for the pupil to begin from the sixth school day after the first day the permanent exclusion took place. This will be the pupil's 'home authority' in cases where the school is in a different local authority area. The school should collaborate with the local authority when the pupil might be eligible for free home to school travel, arranged by the local authority, to the place where they will be receiving education.

In addition, where a pupil has an EHCP, the local authority may need to review the plan or reassess the child's needs, in consultation with parents, with a view to identifying a new placement. The local authority must have regard to the relevant statutory guidance when carrying out its duties in relation to the education of looked-after children, which can be found in *Promoting the education of looked-after children and previously looked-after children* (publishing service.gov.uk). Where a looked-after child is excluded, the school should document the provision of immediate suitable education in the child's PEP. Provision does not have to be arranged by either the school or the local authority for a pupil in the final year of compulsory education who does not have any further public examinations to sit.

The education of pupils prior to the sixth day of an exclusion

It is important for schools to help minimise the disruption that suspension or permanent exclusion can cause to a pupil's education. Whilst the statutory duty on governing boards or local authorities is to arrange full-time education from the sixth day of a suspension or permanent exclusion, there is an obvious benefit to the pupil in starting this provision as soon as possible. In the case of a looked-after child or child with a social worker, the school and the local authority should work together to arrange alternative provision from the first day following the suspension or permanent exclusion.

Where it is not possible, or not appropriate, to arrange alternative provision during the first five school days of a suspension or permanent exclusion, the school should take reasonable steps to **set and mark work** for the pupil. Online pathways such as Oak Academy can be used but schools should ensure that the work set is **accessible and achievable by the pupil outside school**. The governing board, supported by the MAC governance lead, should ensure that there are clear processes in place to comply with its legal duty to arrange suitable full-time educational provision for pupils of compulsory school age from the sixth consecutive school day of a suspension. This includes:

- Checking that there is a process in place for the governing board to assure itself that the education provided is suitable and full-time
- Quality assuring provision and ensuring that any previous placements have been evaluated, including support for any SEND the pupil may have
- Checking whether there is a process in place to monitor the pupil's attendance and behaviour at the provision
- Checking whether the correct attendance code is being used
- Checking whether the pupil's child protection file and any other information relevant to the pupil's safeguarding and welfare has been securely transferred to their new setting as early as possible, in line with Keeping children safe in education 2021

Part Three

Duties of governing boards in considering suspensions and exclusions

The governing board's duty to consider an exclusion

Governing boards have a key responsibility in considering whether excluded pupils or students should be reinstated. This forms part of their wider role to hold executive leaders to account for the lawful use of exclusion, in line with the duties set out in law, including equalities duties.

DFE Guidance for governing boards on considering an excluded pupil's reinstatement

The governing board has a duty to consider parents' representations about a suspension or permanent exclusion. The requirements on a governing board to consider the reinstatement of a suspended or permanently excluded pupil depend upon a number of factors (these requirements are illustrated by the diagram in **Appendix A**: *A summary of the governing board's duties to review the headteacher's exclusion decision*). In the case of an academy, the governing board may delegate to a committee of the trust board, including a local governing body, if the trust's articles of association allow them to do so. The governing board must consider and decide on the reinstatement of a suspended or permanently excluded pupil within 15 school days of receiving notice of a suspension or permanent exclusion from the headteacher if:

- it is a permanent exclusion;
- it is a suspension which would bring the pupil's total number of school days out of school to more than 15 in a term; or
- it would result in the pupil missing a public examination or national curriculum test.

The requirements are different for suspensions where a pupil would be suspended for more than five but less than 16 school days in a term. In this case, if the parents make representations, the governing board must consider and decide within 50 school days of receiving the notice of suspension whether the suspended pupil should be reinstated. In the absence of any representations from the parents, the governing board is not required to meet and cannot direct the reinstatement of the pupil.

Where a suspension or permanent exclusion would result in a pupil missing a public examination or national curriculum test, there is a further requirement for a governing board. It must, so far as is reasonably practicable, consider and decide on the suspension or permanent exclusion **before** the date of the examination or test. If it is not practical for sufficient governors to consider the reinstatement before the examination or test in the case of an academy the pupil's reinstatement may be considered by a committee of the trust board, including a local governing body, if the trust's articles of association allow them to do so. The following parties must be invited to a meeting of the governing board and allowed to make representations or share information:

- parents (and, where requested, a representative or friend);
- the pupil if they are 18 years or over;
- the headteacher;
- a representative of the local authority (in the case of a maintained school or PRU);48
- the child's social worker if the pupil has one; and
- the VSH if the child is LAC.

The governing board must make reasonable endeavours to arrange the meeting within the statutory time limits set out above and must try to have it at a time that suits all relevant parties. However, its decision will not be invalid simply on the grounds that it was not made within these time limits.

In the case of a suspension which does not bring the pupil's total number of days of suspension to more than five in a term, the governing board must consider any representations made by parents, but it cannot direct reinstatement and is not required to arrange a meeting with parents.

Taking into account, the pupil's age and understanding, the pupil or their parents should also be made aware of their right to attend and participate in governing board meetings and the pupil should be enabled to make a representation on their own behalf if they wish to do so.

DFE Guidance for governing boards on using data on suspensions and permanent exclusions

Governing boards should already be challenging and evaluating what their school's data is telling them about their school. Boards should carefully consider the level of pupil moves and the characteristics of pupils who are moving on any permanent exclusions to ensure the sanction is only used when necessary, as a last resort.

Governing boards should review suspensions and permanent exclusions, those taken off roll and those on roll but attending education off-site. It is important to consider both the cost implications of directing children to be educated off-site in AP and whether there are any patterns to the reasons or timing of moves. For example, if high numbers of children with SEND are moving, the school and the MAC should review its SEN support. The MAC will work with its schools to consider this information, and whether there are patterns across schools within the MAC, recognising that numbers in any one school are often too low to allow for meaningful statistical analysis. Governing boards should consider:

- effectiveness and consistency in implementing the school's behaviour policy
- the school register and absence codes
- instances where pupils receive repeat suspensions
- interventions in place to support pupils at risk of suspension or permanent exclusion
- any variations in the rolling average of permanent exclusions to understand why this is happening, and to ensure they are only used when necessary
- timing of moves and permanent exclusions, and whether there are any patterns, including any indications which may highlight where policies or support are not working
- understanding the characteristics of excluded pupils, and why this is taking place

- whether the placements of pupils directed off-site into AP are reviewed at sufficient intervals to assure that the education is achieving its objectives and that pupils are benefiting from it
- Further information can be found in: *Understanding your data: a guide for school governors and academy trustees* - GOV.UK (www.gov.uk)

Preparing for the consideration of a suspension or permanent exclusion

Where the governing board is legally required to consider the reinstatement of a suspended or permanently excluded pupil they should:

- not discuss the suspension or permanent exclusion with any party outside the meeting;
- ask for any written evidence in advance of the meeting, including witness statements55 and other relevant information held by the school such as those relating to a pupil's SEN and the pupil's school record;
- where possible, circulate any written evidence and information, including a list of those who will be present, to all parties at least five school days in advance of the meeting;
- allow parents and the pupil to be accompanied by a friend or representative (where a pupil under 18 is to be invited as a witness, the governing board should first seek parental consent);
- invite the pupil's social worker, if they have one, and if the pupil is LAC, the VSH to attend;
- comply with their duty to make reasonable adjustments for people who use the school and consider what reasonable adjustments should be made to support the attendance and contribution of parties at the meeting (for example where a parent or pupil has a disability with mobility or communication that has an impact upon their ability to attend the meeting or to make representations); and
- identify the steps they will take to enable and encourage the suspended or permanently excluded pupil to attend the meeting and speak on their behalf (such as providing accessible information or allowing them to bring a friend), taking into account the pupil's age and understanding; or how the suspended or permanently excluded pupil may feed in their views by other means if attending the meeting is not possible.

Pupils who may miss a public examination or national curriculum test if they are suspended or permanently excluded

There is no automatic right for a suspended or permanently excluded pupil to take a public examination or national curriculum test on the school's premises. The governing board should consider whether it would be appropriate to exercise its discretion to allow a suspended or permanently excluded pupil onto the premises for the sole purpose of taking the examination or test or whether this could be facilitated in another way.

Considering the reinstatement of a suspended or permanently excluded pupil

Where the governing board is legally required to consider reinstating a suspended or permanently excluded pupil, they must consider both the interests and circumstances of the suspended or permanently excluded pupil, and that of other pupils, staff, and school community. The governing board must also consider any representations made by or on behalf of:

- parents or the pupil if they are over 18 years old;
- the headteacher;
- the pupil's social worker if the pupil has one;
- if the pupil is looked after57, the VSH; • and the local authority (in the case of a maintained school or PRU).

Taking into account, the pupil's age and understanding, the pupil or their parents should also be made aware of their right to attend and participate in the governing board meeting and the pupil should be enabled to make a representation on their own behalf if they desire to do so.

When establishing the facts in relation to a suspension or permanent exclusion the governing board 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'. In the light of its consideration, the governing board can either:

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

If a reinstatement meeting would make no practical difference because, for example, the pupil has already returned to school following the expiry of a suspension or the parents make clear they do not want their child reinstated, the governing board must still meet to consider whether the pupil should or would have been officially allowed back into the school. Ideally, a reinstatement meeting should happen as soon as possible and should ideally be held before the pupil is back in school.

If it decides against the reinstatement of a pupil who has been permanently excluded the parents can request an **independent review**.

DFE Guidance on considering the reinstatement of a suspended or permanently excluded pupil

The governing board, supported by the MAC governance lead, should agree the steps they will take to ensure all parties will be supported to participate in its consideration and have their views heard. This is particularly important where pupils aged under 18 are speaking about their own suspension or permanent exclusion or giving evidence to the governing board.

The governing board should ensure that clear minutes are taken of the meeting as a record of the evidence that was considered by the governing board. These minutes should be made available to all parties on request and the record of discussion should state clearly how the decisions have been reached. The

governing board should ask all parties to withdraw from the meeting before making a decision. Where present, a clerk may stay to help the governing board by reference to their notes of the meeting and with the wording of the decision letter. In reaching a decision on whether a pupil should be reinstated, the governing board should consider whether the decision to suspend or permanently exclude the pupil was lawful, reasonable, and procedurally fair.

This should consider the welfare and safeguarding of the pupil and their peers, the principal's legal duties, and any evidence that was presented to the governing board in relation to the decision to exclude. The governing board should note the outcome of its consideration on the pupil's educational record, and copies of relevant papers should be kept with the educational record. In cases where the governing board considers parents' representations but does not reinstate the pupil, it should consider whether it would be appropriate to place a note of its findings on the pupil's educational record.

Claims of discrimination to the First-tier Tribunal (Special Educational Needs and Disability), in relation to disability, or County Court, for all other forms of discrimination, can be made up to six months after the discrimination is alleged to have occurred. Schools should retain records and evidence relating to an exclusion for at least six months in case such a claim is made.

The governing board's duty to notify people after its consideration of reinstatement

Where legally required to consider reinstating a suspended or permanently excluded pupil, the governing board must notify parents or the pupil if they are 18 years or over, the headteacher, and where relevant, the local authority, the pupil's social worker and/or the VSH of its decision, and the reasons for it, in writing and without delay. Where the pupil resides in a different local authority area from the one in which the school is located, the governing board must also inform the pupil's 'home authority'. In the case of a permanent exclusion where the governing board decides not to reinstate the pupil, the governing board's notification must state that the exclusion is permanent and provide notice of parents' right to ask for the decision to be reviewed by an IRP and the following information:

- the date by which an application for a review must be made (i.e., 15 school days from the date on which notice in writing of the governing board's decision is given to parents – see paragraph 134);
- where and to whom an application for a review (and any written evidence) should be submitted;
- that any application should set out the grounds on which it is being made and that, where appropriate, this should include a reference to how the pupil's SEN are considered to be relevant to the permanent exclusion;
- that, regardless of whether the permanently excluded pupil has recognised SEN, parents have a right to require the local authority/academy trust to appoint a SEN expert to advise the review panel;
- details of the role of the SEN expert;

- that parents may, at their own expense, appoint someone to make written and/or oral representations to the panel and
- that, in addition to the right to apply for an IRP, if parents believe that there has been unlawful discrimination in relation to the permanent exclusion then 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.
- That a claim of discrimination under the Equality Act 2010 made under these routes should be lodged within six months of the date on which the discrimination is alleged to have taken place (e.g., the day on which the pupil was permanently excluded).

The governing board may provide the information above by delivering it directly to parents in person or to their last known address or posting it first class mail to that address. Notice is deemed to have been given on the same day if it is delivered or on the second working day after posting if it is sent by first class mail.

Providing information to parents following its decision on reinstatement

The governing board should set out the reasons for its decision in sufficient detail to enable all parties to understand why the decision was made. Where relevant, it will be for the governing board to confirm the details of where the parents' application for an IRP should be sent. This is normally the clerk of the IRP.

The notice should make it clear that parents are entitled to bring a friend to the review. In providing details of the role of the SEN expert, the governing board should refer to the statutory guidance provided to SEN experts in paragraphs 230 to 233 of *DFE Suspension and Permanent Exclusion September 2022*. The notice should explain that there would be no cost to parents for this appointment and that parents must make clear if they wish for a SEN expert to be appointed in any application for a review.

Where the governing board declines to reinstate the pupil, it 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 not to reinstate a permanently excluded pupil, which should also include the information set out in paragraph 75 of *DFE Suspension and Permanent Exclusion September 2022*.

The governing board's duty to remove a permanently excluded pupil's name from the school register

The correct removal of pupils from the school admission register is critical to ensuring that permanent exclusions are carried out lawfully and that pupil movements can be effectively monitored. By carrying this role out properly, governing boards can reduce opportunities for the illegal off-rolling of children and make this issue easier to identify and tackle.

DFE Guidance for governing boards on removing an excluded pupil's name from the school register

The governing board must ensure that a pupil's name is removed from the school admission 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 IRP; or
- the parents have stated in writing that they will not be applying for an IRP.

The school cannot backdate the deletion of the pupil's name to the date the pupil's exclusion began.

Where an application for an IRP 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. Where a pupil's name is to be deleted from the school admissions register because of a permanent exclusion the school must make a return to the local authority. The return must include:

- the pupil's full name;
- the full name and address of any parent with whom the pupil normally resides;
- at least one telephone number at which any parent with whom the pupil normally resides can be contacted in an emergency;
- and the grounds upon which their name is to be deleted from the admissions register (i.e., permanent exclusion);
- if the pupil's parent or parents have told the school that the pupil is going to live with one or more of them at a new address, the return must also include the new address, the name of the parent(s) the pupil is going to live there with, and the date when the pupil is going to start living there;
- if the pupil's parent or parents have told the school that the pupil is already registered at another school or is going to go to another school, the return must also give the name of that school and the first date when the pupil attended or is due to attend there; and
- this return must be made as soon as the grounds for deletion is met and no later than the deletion of the pupil's name. 143. Where a pupil's name is removed from the school register and a discrimination claim is subsequently made, the First-tier Tribunal (Special Educational Needs and Disability) or County Court has the power to direct that the pupil should be reinstated.

DFE Guidance on providing exclusion data

In addition, within 14 days of a request, a governing board must provide to the Secretary of State certain information about any pupils suspended or permanently excluded within the last 12 months.

DFE Guidance to schools on marking attendance registers following permanent exclusion

Whilst a permanently excluded pupil's name remains on a school's admission register, the pupil should be marked using the appropriate attendance code. Where alternative provision has been made and the pupil attends it, an appropriate attendance code, such as Code D (Dual Registered - at another educational establishment) or Code B (Off-site educational activity, if the provision is an approved educational activity that does not involve the pupil being registered at any other school), should be used. Where pupils are not attending alternative provision, they should be marked absent using Code E.

DFE Guidance on common transfer files

The common transfer file should be transferred within 15 school days of the pupil ceasing to be registered at the school.

DFE Guidance to schools on sharing child protection information when a child is permanently excluded

Where pupils leave the school (including in-year transfers) the designated safeguarding lead should ensure their child protection file is transferred to the new school or college as soon as possible, and within 5 days for an in-year transfer or within the first 5 days of the start of a new term. This should be transferred separately from the main pupil file, ensuring secure transit, and confirmation of receipt should be obtained. Receiving schools and colleges should ensure key staff such as designated safeguarding leads and special educational needs coordinators (SENCOs) or the named person with oversight for SEN in colleges, are aware as required.

SJBCA Suspensions and Exclusions Policy

Part Four
The MAC's duty to arrange Independent Review Panels (IRPs)

The MAC's duty to arrange an independent review panel

IRPs contribute to a robust process of scrutiny to ensure that exclusions are lawful, reasonable, and procedurally fair. This section sets out how and when the MAC should organise such reviews when requested. The MAC governance lead will fully support the MAC to organise an IRP.

Arranging a date and venue

If applied for by parents within the legal time frame, the MAC must, at our own expense, arrange for an IRP hearing to review the decision of a governing board

not to reinstate a permanently excluded pupil. The legal time frame for an application is:

- within 15 school days of notice being given to the parents by the governing board of its decision not to reinstate a permanently excluded pupil (in accordance with the requirements summarised in paragraph 129); or
- where an application has not been made within this time frame, within 15 school days of the final determination of a claim of discrimination under the Equality Act 2010 in relation to the permanent exclusion.

Any application made outside of the legal time frame must be rejected by the MAC. The MAC must not delay or postpone arranging an IRP where parents also make a claim of discrimination in relation to the permanent exclusion to the First-tier Tribunal (Special Educational Needs and Disability) or the County Court. Parents may request an IRP even if they did not make representations to, or attend, the meeting at which the governing board considered reinstating the pupil. Reasonable steps must be taken to identify a date for the review that all parties, and any SEN expert appointed to give advice in person, are able to attend. However, the review must begin within 15 school days of the day on which the parent's application for a review was made (panels have the power to adjourn a hearing if required). The venue must be reasonably accessible to all parties. The MAC must arrange a venue for hearing the review. Whatever the venue, the panel must hold the hearing in private unless the MAC directs otherwise. Where the issues raised by two or more applications for review are the same, or connected, the panel may combine the reviews if, after consultation with all parties, there are no objections.

DFE Guidance to the MAC on arranging a date and venue for a review

The MAC should take all reasonable steps to ensure the venue for the review is appropriate and has a suitable area for the parties to wait separately from the panel before the review. Where the issues raised by two or more applications for review are the same, or connected, but the panel does not combine the reviews, the MAC should take reasonable steps to ensure fairness and consistency. Where possible, the same panel members should hear all related reviews.

Appointing panel members

The MAC must ensure that the panel is constituted with either three or five members representing each of the three categories below. A five-member panel must be constituted with two members from each of the categories of school governors and headteachers. These must be:

- 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.
- Current or former school governors (of a maintained school, members of a PRU management committees and directors of academy trusts) who have served as a governor for at least 12 consecutive months in the last five years, provided they have not been teachers or headteachers during that time.

- Headteachers or individuals who have been a headteacher within the last five years.

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

- are a director of the MAC of the school;
- are the principal of the school who has permanently excluded the pupil or anyone who has held this position in the last five years;
- are an employee of the MAC, or the governing board, of the school who has permanently excluded the pupil (unless they are employed as a headteacher at another school);
- have, or at any time have had, any connection with the MAC, school, governing board, parents or pupil, or the incident leading to the permanent 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 employed by the MAC as a headteacher at another school); or
- have not had the required training within the last two years, see appendix D.

It is for the MAC to determine its own payment arrangements for panel members. The MAC must make arrangements to indemnify panel members against any legal costs and expenses reasonably incurred as a result of any decisions or actions connected to the review which are taken in good faith.

DFE Guidance to the MAC on appointing independent review panel members

Care should be taken to avoid bias or an appearance of bias. The MAC should request that prospective panel members declare any conflict of interest at the earliest opportunity. Where possible, panel members who are governors or headteachers should reflect the phase of education (primary/secondary) and type of school from which the pupil was permanently excluded, for example: special school; boarding school; PRU; academy or maintained school. 165. The MAC should consider whether the chair should be someone with a legal qualification or other legal experience. This is particularly important where a clerk will not be providing legal expertise to the panel. To meet their duties within the statutory time frame, the MAC should identify several eligible individuals in each of the different categories required to constitute an IRP in advance of an application for a review.

Appointing a clerk and the clerk's role

The MAC may appoint a clerk to provide advice to the panel and parties to the review on procedure, law and statutory guidance on suspensions and permanent exclusions. Where appointed the clerk must perform the following additional functions:

- Make reasonable efforts to inform the following people that they are entitled to: make written representations to the panel; attend the hearing and make oral representations to the panel; be represented: a. the parents or pupil if they are 18 years old; b. the headteacher; c. the governing board; and d. the local authority (in the case of a maintained school or PRU).
- Make reasonable efforts to circulate to all parties, copies of relevant papers at least 5 school days before the review. These papers must include: a. the governing board's decision; b. the parents' application for a review; and c. any policies or documents that the governing board was required to have regard to in making its 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 following instructions from the panel.

Where a clerk is not appointed, the functions above become the responsibility of the MAC.
Guidance to the local authority/academy trust on appointing an independent review panel clerk can be found in Appendix B

Appointing a SEN expert: DFE Guidance to the MAC on appointing a SEN expert.
If requested by parents with their application for an independent review, the MAC must appoint a SEN expert to attend the review and must cover the associated costs of this appointment.
The MAC 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 Ih are taken in good faith. Parents or a pupil if they are 18 years or over 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. The SEN expert's role is set out in Appendix E.
Individuals may not serve as a SEN expert if they have, or at any time have had, any connection with the MAC, school, parents or pupil, or the incident leading to the permanent exclusion, which might reasonably be taken to raise doubts about their ability to act impartially. However, an individual should not be assumed to have such a connection simply because they are an employee of the MAC. The SEN expert must be someone who has expertise and experience of special educational needs considered by the MAC as appropriate to perform the functions specified in the legislation. T
he SEN expert should be a professional with first-hand experience in the assessment and support of SEN, as well as an understanding of the legal requirements on schools concerning SEN and disability. Examples of suitable individuals might include educational psychologists; specialist SEN teachers; SENCOs; and behaviour support teachers. Recently retired individuals are not precluded from fulfilling this role, though the MAC would need to assure themselves that the individual had a good understanding of current practice and the legal requirements on schools in relation to SEN and disability. Additionally,

they should also be able to demonstrate that they have experience working in schools.
Whilst individuals are not automatically taken to be partial simply Ie they are an employee of, or contracted by the MAC, they should not have had any previous involvement in the assessment or support of SEN for the permanently excluded pupil, or siblings of the permanently excluded pupil. The MAC should request that prospective SEN experts declare any conflict of interest at the earliest opportunity. The final decision on the appointment of a SEN expert is for the MAC to make but it should take reasonable steps to ensure that parents have confidence in the impartiality and capability of the SEN expert. Where possible, this may include offering parents a choice of SEN experts. To meet its duties within the statutory time frame, the MAC should consider maintaining a list of individuals capable of performing the role of SEN expert in advance of a request. It is for the MAC to determine the amount of any payment in relation to the appointment of the SEN expert, such as financial loss, travel, and subsistence allowances.
Information on the roles of independent review panel members, the clerk, the SEN expert, the social worker, and the Virtual School Head in the conduct of an independent review can be found in Appendix E

The role and purpose of the Independent Review Panel
The role of the IRP is to assess whether a pupil's exclusion has been **lawful, reasonable, and procedurally fair and what further action might need to be taken.** This section offers guidance on how IRPs should be conducted, and the roles of relevant experts and advocates, to achieve this.

DFE Guidance on the independent review process
Panel members and, if appointed, the SEN expert must declare any known conflict of interest to the MAC before the start of the review. The role of the panel is to **review the governing board's decision not to reinstate a permanently excluded pupil**. In reviewing the decision, the panel must consider the interests and circumstances of the permanently excluded pupil, including the circumstances in which the pupil was permanently excluded, and have regard to the interests of other pupils and people working at the school. Taking into account, the pupil's age and understanding, the pupil or their parents should be made aware of their right to attend and participate in the review meeting and the pupil should be enabled to make a representation on their own behalf if they desire to do so. The panel must apply the civil standard of proof i.e., 'on the balance of probabilities' which means that it is more likely than not that a fact is true. This should be applied rather than the criminal standard of 'beyond reasonable doubt'.
Following its review, the panel can decide to:

- uphold the governing board's decision not to reinstate;
- recommend that the governing board reconsiders reinstatement; or
- quash the governing board's decision and direct that the governing board reconsiders reinstatement.

The panel's decision does not have to be unanimous and can be decided by a majority vote. In the case of a tied vote, the chair has the casting vote. The IRP's

decision is binding on the: pupil; parents; governing board; headteacher; and local authority.

The panel may only quash a governing board's decision not to reinstate if it considers that the decision was flawed when considered in the light of the principles applicable to an application for judicial review.

New evidence may be presented to the panel, though the school may not introduce new reasons for the permanent exclusion or the decision not to reinstate the pupil and the panel must disregard any new reasons that are introduced.

In deciding whether the governing board's decision was flawed, and therefore whether to quash the decision not to reinstate, the panel must only take account of the evidence that was available to the governing board at the time of making its decision not to reinstate.

This includes any evidence that the panel considers would, or should, have been available to the governing board and that it ought to have considered if it had been acting reasonably.

If evidence is presented that the panel considers it is unreasonable to expect the governing board to have been aware of at the time of its decision, the panel can take account of the evidence when deciding whether to recommend that the governing board reconsider reinstatement.

Where a SEN expert is present, the panel must seek and have regard to the SEN expert's view of how SEN may be relevant to the pupil's permanent exclusion.

Where a social worker is present, the panel must have regard to any representation made by the social worker of how the pupil's experiences, needs, safeguarding risks and/or welfare may be relevant to the pupil's permanent exclusion.

Where a VSH is present, the panel must have regard to any representation made by the social worker of how any of the child's background, education and safeguarding needs were considered by the principal in the lead up to the permanent exclusion or relevant to the pupil's permanent exclusion. The jurisdiction of the First-tier Tribunal (Special Educational Needs and Disability) and County Court to hear claims of discrimination relating to a permanent exclusion does not preclude an IRP from considering issues of discrimination in reaching its decision.

If a panel directs a governing board to reconsider reinstatement it may order the MAC to make an equivalent payment to the local authority in whose area the school is located unless, within ten school days of receiving notice of the panel's decision, the governing board decides to reinstate the pupil. The sum of this adjustment/payment must be £4,000 and would be in addition to any funding that would normally follow a permanently excluded pupil. The panel does not have the power to order a financial readjustment or payment in circumstances where it has only recommended that the governing board reconsiders the reinstatement of the pupil.

The panel may adjourn on more than one occasion, if necessary. However, consideration must be given to the effect of adjournment on the parties to the review, the permanently excluded pupil and their parents, and any victim(s). A review cannot continue if the panel no longer has representation from each of the

three categories of members required. In this event, the panel may be adjourned until the number can be restored. Once a review has begun, no panel member may be substituted by a new member for any reason. Accordingly, if the required representation cannot be restored from the original members, a new panel must be constituted to conduct the review afresh. In the case of a five-member panel, the panel may continue in the absence of any of its members, provided all three categories of members are still represented. 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 does not subsequently decide to offer to reinstate a pupil within ten school days; and
- any information that the panel has directed the governing board to place on the pupil's educational record.

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DFE Guidance to independent review panel members on the conduct of an independent review panel

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 the MAC. 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.

Where a SEN expert has been requested but is not present, the panel should make parents aware of their right to request that the review is adjourned until a SEN expert can attend. 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. 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.

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

DFE Guidance to independent review panel members on coming to a decision

The panel's decision should not be influenced by any stated intention of the parents or pupil not to return to the school. The focus of the panel's decision is whether there are sufficient grounds for them to direct or recommend that the governing board reconsider its decision that the pupil should not be reinstated. Public law principles underpin good decision-making.

All decisions of a governing board must be made in accordance with public law. Panels are expected to understand the legislation that is relevant to suspensions and permanent exclusions and the legal principles that apply. Headteachers and governing board members of panels are likely to have first-hand experience of the education context that may be relevant to considerations about whether a decision was reasonable in the circumstances.

When considering the governing board's decision in light of the principles applicable in an application for judicial review, the panel should apply the following tests:

• Illegality – did the governing board act outside the scope of its legal powers in deciding that the pupil should not be reinstated?

• Irrationality – did the governing board rely on irrelevant points, fail to take account of all relevant points, or make a decision so unreasonable that no governing board 62 acting reasonably in such circumstances could have made it?

• Procedural impropriety – was the governing board's consideration so procedurally unfair or flawed that justice was clearly not done?

Procedural impropriety means not simply a breach of minor points of procedure but something more substantive that has a significant impact on the quality of the decision-making process. This will be a judgement for the panel to make, but the following are examples of issues that could give rise to procedural impropriety: bias; failing to notify parents of their right to make representations; the governing board making a decision without having given parents an opportunity to make representations; failing to give reasons for a decision; or being a judge in your own case (for example, if the headteacher who took the decision to exclude were also to vote on whether the pupil should be reinstated).

Where the criteria for quashing a decision not to reinstate has not been met, the panel should consider whether it would be appropriate to recommend that a governing board **reconsiders** its decision not to reinstate the pupil. This should not be the default option but should be used where evidence of procedural flaws has been identified that do not meet the criteria for quashing the decision, but Ih the panel believes justify a reconsideration of the governing board's decision. This coIclude when new evidence presented at the review hearing was not available to the governing board at thI time of its Iecision. In all other cases the panel should uphold the governing board's decision.

DFE Guidance to independent review panel members on the financial readjustment/payment

In the case of an academy, where the panel has quashed the governing board's decision, the panel should order that the MAC must make a payment directly to the local authority in whose area the academy is located, unless within ten school

days of receiving notice of the panel's decision, the governing board decides to reinstate the pupil.

DFE Guidance to the clerk and MAC on the record of the proceedings of a review panel

The clerk to a review panel should ensure that minutes of the proceedingsIaken, including details of the attendance, the voting, and the decision. The minutes are not public documents but should be retained by the MAC for a period of at least five years, as they may need to be seen by a court. The MAC should be aware of its duties under the Freedom of Information Act 2000, the Data Protection Act 2018, and the General Data Protection Regulation (EU) 2016/679 as it forms part of UK law (the UK GDPR) when retaining information.

DFI Guidance to the independent review panel and clerk on notifying parties of the outcome of the review

If the panel upholds the governing board's decision not to reinstate, the clerk should immediately report this to the local authority (who should inform, where a pupil has one, the social worker and VSH), and notify the parents and the governing board. If the pupil lives outside the localIhority area in which the school is located, the clerk should make sure that the 'home authority' is also informed in writing of the outcome of the reviIhout delay. This includes any situation where parents withdraw or abandon their application for a review.

The governing board's duty to reconsider reinstatement following a review

When an IRP directs or recommends a pupil's reinstatement, the governing board has the opportunity to look at the pupil's reinstatement afresh. This section offers guidance on how this reconsideration should be undertaken and the necessary next steps.

DFE Guidance on the governing board's duty to reconsider reinstatement following a review

Where the panel directs or recommends that the governing board reconsider whether a pupil should be reinstated, the governing board must reconvene to do so within ten school days of being given notice of the panel's decision. Notice is deemed to have been given on the day of delivery if it is delivered directly or on the second working day after posting if it is sent by first class mail. It is important that the governing board conscientiously reconsiders whether the pupil should be reinstated, whether the panel has directed or merely recommended it to do so. Whilst the governing board may still reach the same conclusion as it first did, it may face challenge in the courts if it refuses to reinstate the pupil, without strong justification.

Following a direction to reconsider, unless within ten school days of receiving notice of the panel's decision the governing board decides to reinstate the pupil, an adjustment will be made to the school's budget in the sum of £4,000 if the panel has ordered this. In the case of an academy, the school will be required to make an equivalent payment directly to the local authority in whose area the school is located. This payment will be in addition to any funding that would

normally follow a permanently excluded pupil. If the governing board offers to reinstate the pupil within the specified timescale but this is declined by the parents, no budget adjustment or payment can be made.

The governing board must comply with any direction of the panel to place a note on the pupil's educational record. The clerk must also note, where a pupil is reinstated following a direction or recommendation to reconsider, or would have been reinstated if it had been practical to do so, the permanent exclusion does not count towards the rule that an admission authority may refuse to admit a child who has been permanently excluded twice; nor, in the case of a community or voluntary controlled school, does it count for the purposes of the rule that the governing board may appeal against the decision of the local authority as the admission authority to admit the child. In the case of either a recommended or directed reconsideration, the governing board must notify the following people of their reconsidered decision, and the reasons for it, in writing and without delay:

- the parents;
- the headteacher;
- the local authority; and, where relevant, the 'home authority'.

The reconsideration provides an opportunity for the governing board to look afresh at the question of reinstating the pupil, in light of the findings of the IRP. There is no requirement to seek further representations from other parties or to invite them to the reconsideration meeting.

The governing board is not prevented from taking into account other matters that it considers relevant. It should, however, take care to ensure that any additional information does not make the decision unlawful. This could be the case, for example, where new evidence is presented, or information is considered that is irrelevant to the decision at hand.

The governing board should ensure that clear minutes are taken of the meeting as a record of the evidence that was considered by the governing board. These minutes should be made available to all parties on request. The governing board should ask any parties in attendance to withdraw before making a decision. Where present, a clerk may stay to help the governing board by reference to their notes of the meeting and with the wording of the decision letter.

The governing board should note the outcome of its consideration on the pupil's educational record, and copies of relevant papers should be kept with the educational record. The governing board should base its reconsideration on the presumption that a pupil will return to the school if reinstated, regardless of any stated intentions by the parents or pupil. Any decision of a governing board to offer reinstatement which is subsequently turned down by the parents should be recorded on the pupil's educational record. The governing board's decision should demonstrate how they have addressed the concerns raised by the IRP.

APPENDICES

Appendix A:

A summary of the governing board's duties to review the principal's exclusion decision

1. Is it a permanent exclusion? If the answer is **yes**, the governing board must convene a meeting to consider reinstatement within 15 school days of receiving notice of the permanent exclusion. If the answer is **no**, go to step 2.

2. Is it a suspension that alone, or in conjunction with previous suspensions, will take the pupil's total number of days out of school above 15 for a term? If the answer is **yes**, the governing board must convene a meeting to consider reinstatement within 15 school days of receiving notice of the suspension. If the answer is **no**, go to step 3.

3. Is it a suspension or permanent exclusion that will result in the pupil missing a public exam or national curriculum test? If the answer is **yes**, the governing board must convene a meeting to consider reinstatement within 15 school days of receiving notice of the suspension or permanent exclusion. The governing board must also take reasonable steps to meet before the date of the examination. If this is not practical, the chair of governors may consider pupil's reinstatement alone. If the answer is **no**, go to step 4.

4. Will the suspension(s) take the pupil's total number of school days out of school above five but less than 16 for the term? If the answer is **yes**, go to step 5. If the answer is **no**, the governing board must consider any representations made by parents but does not have the power to decide whether to reinstate the pupil.

5. Have the pupil's parents requested a governing board meeting? If the answer is **yes**, the governing board must convene a meeting to consider reinstatement within 50 school days of receiving notice of the suspension.

The governing board is not required to consider the suspension and does not have the power to decide to reinstate the pupil.

Appendix B: DFE Guidance to the MAC trust on appointing an independent review panel clerk

The clerk should not have served as a clerk to the governing board in the meeting atIch the decision was made by the governing board not to reinstate the pupil. In addition to the training required by law, clerks should have an up to date understanding of developments in caseI which are relevant to suspension and permanent exclusion. Where a clerk is not appointed, the local authority/academy trust should consider what additionIl steps it may need to take to ensure that the IRP is administered properly.

Appendix C: DFE Guidance to the MAC regarding the clerk's role on preparing for an independent review

The MAC should ensure the clerk follows the advice below:

The clerk should identify in advance of the meeting whether the pupil will be attending. Where a permanently excluded pupil is attending the hearing,

consideration should be given in advance as to the steps that will be taken to support their participation.

If the permanently excluded pupil is not attending, it should be made clear that they may feed in their views through a representative or by submitting a written statement.

The clerk should inform the parents of their right to bring a friend to the hearing. To review the governing board's decision, the panel will generally need to hear from those involved in the incident, or incidents, leading to the permanent exclusion. The clerk 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. In the case of witnesses who are pupils of the school, it will normally be more appropriate for the panel to rely on written statements.

Pupils may appear as witnesses if they do so voluntarily and, if they are under 18, with their parent's consent. In such cases, that pupil's parents should be invited to attend the meeting in support of their child. Where character witnesses are proposed, the clerk should seek the agreement of the panel; but this should be allowed unless there is good reason to refuse.

All written witness statements should be attributed, signed, and dated unless the school 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.

The general principle remains that permanently excluded pupils are entitled to know the substance behind the reason for their permanent exclusion and the school should communicate this effectively with the pupil. Whilst carrying this out it is important to ensure that any reasonable adjustments are made and recognise that the pupil may have additional needs (e.g., speech, language and communication needs, cognition difficulties or EAL). Parties (who are parents, the pupil if they are 18 years or over, the headteacher of the school, the responsible body, and the arranging authority) attending the hearing have the right to be represented.

Representatives may make written or oral representations to the panel. If any of the parties wish to bring more than one friend or representative, the clerk should seek the panel's agreement in advance, having regard to a reasonable limit on numbers attending the review.

All parents may attend if they wish to do so, and each can make representations and be represented. In addition to written witness statements, the clerk should request written evidence from the school to circulate it in advance of the meeting, such as policies and documents of the school which the governing board would reasonably have been expected to take account of in reaching its decision on reinstatement.

Where the school's case rests largely or solely on physical evidence, and where the facts are in dispute, then the physical evidence, if practicable, should be retained and be available to the panel. Where there are difficulties in retaining physical evidence, photographs or signed witness statements should be used. Where the headteacher who permanently excluded the pupil has left the school, the panel may use its discretion in deciding whether to also invite this person to

make representations. The clerk should notify the panel where requested documents have not been provided so that the panel can decide on whether to adjourn the hearing to allow for the documents to be provided.

Appendix D: Ensuring IRB panel members are trained

The MAC must ensure that all panel members and clerks have received training within the two years before the date of the review. This training must have covered:

- the requirements of the primary legislation, regulations and statutory guidance governing suspensions and permanent exclusions on disciplinary grounds (which would include an understanding of how the principles applicable in an application for judicial review relating 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 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.

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Appendix E: DFE Guidance to attendees at IRPs

DFE Guidance to SEN experts on their conduct during an independent review

The SEN expert's role is analogous to an expert witness, providing impartial specialist advice to the panel on how SEN might be relevant to the permanent 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 special educational needs.

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 permanently excluded pupil, were lawful, 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 permanent exclusion.

Where the school does not recognise a pupil as having 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 permanent exclusion. 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.

DFE Guidance to social workers on their attendance at an independent review
The focus of the social worker's advice should be on whether the pupil's welfare, safeguarding needs and risks were considered in the lead up to the permanent exclusion. If the social worker believes that this was not the case, they should, where possible, advise the panel on the contribution that the pupil's needs could have made to the circumstances of the pupil's permanent exclusion.

DFE Guidance to Virtual School Heads on their attendance at an independent review.
The focus of the VSH role for any LAC should be on helping the panel consider whether the child's background and educational needs were considered by the headteacher in the lead up to the permanent exclusion, including whether any additional support to the pupil could be provided to improve their behaviour and avoid exclusion where possible. If the VSH believes that this was not the case, they should, where possible, advise the panel on the contribution that the pupil's needs could have made to the circumstances of the pupil's permanent exclusion.

DFE Guidance to the clerk and MAC on the record of the proceedings of a review panel
The clerk to a review panel should ensure that minutes of the proceedings are taken, including details of the attendance, the voting, and the decision. The minutes are not public documents but should be retained by the MAC for a period of at least five years, as they may need to be seen by a court. 238. The MAC should be aware of its duties under the Freedom of Information Act 2000, the Data Protection Act 2018, and the General Data Protection Regulation (EU) 2016/679 as it forms part of UK law (the UK GDPR) when retaining information.

Appendix F: Statutory guidance to the headteacher, governing board and independent review panel members on police involvement and parallel criminal proceedings
Police involvement and parallel criminal proceedings against a pupil may affect how the exclusion and its review process are conducted, although they must always remain lawful, reasonable, and procedurally fair. This section offers guidance to headteachers, governing boards, and IRP when this is the case.

DFE Guidance for headteachers, governing boards and independent review panels on police involvement and parallel criminal proceedings
The headteacher need not postpone taking a decision on a suspension and permanent exclusion solely because a police investigation is underway and/or any criminal proceedings may be brought. In such circumstances, the headteacher will need to take a decision on the evidence available to them at the time. In all cases, schools should follow general safeguarding principles as found in Keeping children safe in education 2021 Where the evidence is limited by a police investigation or criminal proceedings, the headteacher should consider any additional steps they may need to take to ensure that the decision to suspend or permanently exclude is fair. However, the final decision on whether to suspend or permanently exclude is for the headteacher to make. 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. The fact that parallel criminal proceedings are in progress should also not directly determine whether an IRP 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 suspended or permanently excluded pupil, the parents, any victim, or the school; and
- whether an adjournment or declining to adjourn might result in injustice.

Where a panel decides to adjourn, the clerk (or MAC 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.