L.E.A.D. Academy Trust
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Exclusion Policy and Procedure

Approved September 2020 updated September 2021 and following legislation relating to Covid-19

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1. Aims

The L.E.A.D. Academy Trust requires this policy to be implemented by all its member academies. It aims to ensure that:

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

2. Legislation and statutory guidance

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

During the COV-ID 19 outbreak there are temporary arrangements in place from 25th September 2021 until March 24th 2022 in which timescales and methods of communication are specified. Follow the link for guidance. Procedures are set out in blue within this policy or follow this link.

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

This statutory guidance describes the temporary changes we have made to the school suspensions and permanent expulsions process due to coronavirus (COVID-19) following the guidance above.

The new regulations change some of the procedures that must be followed in relation to a suspension or a permanent expulsion, to give greater flexibility to schools, parents and local authorities during the coronavirus (COVID-19) outbreak. They apply to all maintained schools, academies (including alternative provision academies but excluding 16 to 19 academies) and pupil referral units (PRUs).
The normal arrangements and procedures that must follow a decision to suspend or exclude on disciplinary grounds are described in the 2017 statutory guidance 'Exclusion from maintained schools, academies and pupil referral units in England'. They are unchanged except as noted below.

The term 'governing board' used throughout this guidance means:

- the governing body of a maintained school
- the management committee of a PRU
- an academy trust

Important dates

All suspensions and permanent expulsions occurring between 25 September 2021 and 24 March 2022 (inclusive of those dates) are subject to amended arrangements with regards to:

- the use of remote access technology (for example, videoconferencing or telephone conferencing software) for meetings of governing boards or independent review panels
- the deadline for applications for an independent review

Governing boards and independent review panels (IRPs) who have a duty to meet to discuss a suspension or a permanent expulsion that occurred between 25 September 2021 and 24 March 2022 may be eligible for time extensions in some circumstances.

Meetings relating to expulsions occurring between 25 September 2021 and 24 September 2021 must take place within the normal timescales described in the suspensions and expulsions from maintained schools, academies and pupil referral units in England statutory guidance.

Governing boards and arranging authorities for IRPs should take all reasonable steps to meet the normal deadlines for suspensions and expulsions occurring after 25 September 2021.

They should:

- consider the actions for schools during the coronavirus (COVID-19) outbreak
- facilitate remote access meetings where it is not reasonably practicable to meet in person

If the deadlines are missed because of coronavirus (COVID-19), the meeting must be held as soon as it becomes reasonably practicable to meet either in person or via remote access (respecting the conditions for such a meeting).

A permanent expulsion should be taken as having 'occurred' on the first day of the expulsion.

Any permanent expulsions covered by these arrangements will continue to be subject to them until the procedures for scrutiny of the permanent expulsion have been exhausted.

Timescales for suspensions or permanent expulsions between 25 September 2021 and 24 March 2022

Expulsions between 25 September 2021 and 24 March 2022 (inclusive) should follow the deadlines in the suspensions and expulsions from maintained schools, academies and pupil referral units in England statutory guidance, other than the deadline for the application of an independent review.

If it is not reasonably practicable to meet by the usual deadline either in person because of coronavirus (COVID-19), or by remote access because of the conditions for a remote access meeting, the meeting must not be delayed any longer than is reasonably necessary because of coronavirus (COVID-19).

Meetings relating to expulsions occurring between 25 September 2021 and 24 March 2022 must take place within the normal timescales described in suspensions and expulsions from maintained schools, academies and pupil referral units in England. If the deadlines are missed because of coronavirus (COVID-19), the meeting must be held as soon as it is reasonably practicable to meet in person or via remote access (respecting the conditions for such a meeting).

Conducting Remote Meetings

For suspensions or permanent expulsions occurring between 25 September 2021 and 24 March 2022 (inclusive of those dates), meetings of governing boards or IRPs should be held via remote access if:

- it is not reasonably practicable for the meeting to take place in person, within the usual timescales, due to coronavirus (COVID-19)
- the governing board, or arranging authority for IRPs, is satisfied that:
  - all the participants agree to the use of remote access
  - all the participants have access to the technology which will allow them to hear and speak throughout the meeting, and to see and be seen, if a live video link is used
  - all the participants will be able to put across their point of view or fulfil their function
  - the meeting can be held fairly and transparently via remote access.

The governing board is responsible for ensuring that these conditions are met before a meeting takes place. Those who have no intention of taking part in the meeting should not be treated as 'participants' for the purposes of the conditions.

When determining if it's practicable to meet in person, the governing board or arranging authority should assess:

- the facts of the case
- the circumstances in which a meeting in person could be expected to take place
- the needs of the intended participants, as far as this is possible
- the latest public health guidance, including the actions for schools during the COV-ID 19 outbreak, see link below.

https://www.gov.uk/government/publications/actions-for-schools-during-the-coronavirus-outbreak

Arranging a remote access meeting

The governing board or arranging authority should explain the technology they propose to use to make sure that the participants, particularly pupils and their families, know that they do not have to agree to a meeting to be held via remote access.

They should make families aware that if they do not consent to a remote access meeting then the meeting is likely to be delayed.

Where a parent or pupil has given their agreement for a meeting to be held via remote access, the other participants should accommodate that preference except in exceptional circumstances.

Governing boards, arranging authorities and panel members must:

- comply with relevant equalities legislation

- recognise that some participants may find it difficult to participate in a remote access meeting, for example if they have a disability or if English is not their first language

The governing board or arranging authority should take reasonable steps to facilitate a parent, child or young person's access to the technology required. For example, governing boards and arranging authorities may wish to run a 'test meeting' to trial if technology that is going to be used is suitable.

If a governor, trustee, panel member or other participant requires support to access or use remote access technology, the governing board or arranging authority should facilitate this to ensure the meeting can be held promptly.

Fairness and transparency

The governing board must assess whether a meeting can be held fairly and transparently via remote access with reference to the facts of each case. It cannot be decided by following a general policy.

If a governing board is not satisfied that a meeting can be held fairly and transparently via remote access, they should consider using reasonable adjustments to overcome this. They should consult with parents and pupils to take account of their wishes.

Running the meeting

If a meeting is held via remote access, the chair must make every effort to check the participants understand the proceedings and can engage with them. This is to ensure the meeting is conducted fairly.

If, once the meeting starts, the meeting cannot proceed fairly, for example because a participant cannot access the meeting, the governing board or IRP should adjourn the meeting.

The use of remote access does not alter other procedural requirements that may apply to governing boards, arranging authorities or IRPs. For example, if a parent requests the appointment of a special educational needs (SEN) expert to advise a review panel, the arranging authority must appoint one and cover the cost as normal. Parents may be joined by a friend or representative as normal.

Though governing boards and IRPs must consider written representations if they are made, the law does not allow for solely paper-based 'meetings', conducted in writing.

As long as the conditions for a remote access meeting are met, it is possible for some participants to be present in person and for others to join the meeting via remote access. All the participants must have access to technology which will allow them to hear and be heard by others throughout (and to see and be seen throughout, if a live video link is used).

To help meetings run smoothly and ensure they are accessible for participants, governing boards and IRPs must:

- provide clear instructions about how to join the meeting virtually, and distribute the relevant papers in a timely manner ahead of the meeting
- indicate a named person who participants can contact with any questions they may have beforehand

- consider holding a pre-meeting with attendees to check that the available technology is suitable, and all participants understand how to access the meeting
- ensure the chair is prepared to explain the agenda at the start and to provide clear guidance on how the meeting will be run, for example:
    - how participants should indicate they wish to speak
    - how any 'chat' functions should be used
    - whether there will be any breaks in proceedings
    - how participants can access advocacy services during the meeting

Applications for an independent review

The deadline for applications for an independent review has been reinstated to normal statutory timescales (15 days) in relation to permanent expulsions occurring from 25 September 2021. Applications for an independent review must be made within 15 school days from the date on which notice of the governing board's decision is given in writing to parents, or directly to the pupil if they are 18 or above.

Schools must allow 15 school days to pass without an application having been made before deleting the name of a permanently excluded pupil from their admissions register. This is in accordance with the Education (Pupil Registration) (England) Regulations 2006 (as amended).

The deadline for applications for an independent review in relation to permanent expulsions occurring between 25 September 2020 and 24 September 2021 remains 25 school days from the date on which notice of the governing board's decision is given in writing to parents, or directly to the pupil if they are 18 or above.

The following legislation supports the policy, which outline schools' powers to suspend and exclude pupils:

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

In addition, the policy is based on:

- Part 7, chapter 2 of the Education and Inspections Act 2006, which looks at parental responsibility for excluded pupils
- Section 579 of the Education Act 1996, which defines 'school day'
- The Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007, as amended by The Education (Provision of Full-Time Education for Excluded Pupils) (England) (Amendment) Regulations 2014

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

3. The decision to suspend or permanently exclude

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

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

- in response to serious or persistent breaches of the school's behaviour policy **and**
- if allowing the pupil to remain in school would seriously harm the education or welfare of others.
  (This may include behaviour outside of school)

Before deciding whether to suspend or permanently exclude a pupil, the headteacher will:

- ensure appropriate investigations have been carried out
- consider all the relevant facts and evidence, including whether the incident(s) leading to the suspension or permanent expulsion were provoked
- allow the pupil to give their version of events where practicable
- consider if the pupil has special educational needs (SEN)
- consider any 'contributing factors' (See point 18 of Statutory Guidance)
- check that appropriate support had been provided
- refer to Section 3 The head teacher's power to exclude for compliance to the law.

4. Definition

The Department for Education regulations allow the Headteacher (or a member of the Senior Leadership Team acting as such) to suspend a pupil for one or more fixed periods not exceeding 45 school days in any one academic year. Most suspensions are of a fixed-term nature and are of short duration. For the purposes of suspensions, school day is defined as any day on which there is a school session. Therefore, INSET or staff training days do not count as a school day.

A suspension does not have to be for a continuous period. In exceptional cases, usually where further evidence has come to light, a further suspension may be issued immediately after the first period of suspension: or a permanent expulsion may be issued to begin after the end of the suspension. **It is unlawful to 'convert a suspension into a permanent expulsion. (See para 3.3)**

Pupils whose behaviour at **lunchtime** is disruptive may be suspended from the academy premises for the duration of the lunchtime period. In such cases the legal requirements in relation to suspension, such as the Headteacher's duty to notify parents, still apply.

5. Roles and responsibilities

5.1 The headteacher

Informing parents

The headteacher will immediately provide the following information, in writing, to the parents of a suspended or permanently excluded pupil:

- the reason(s) for the suspension or permanent expulsion
- the length of a suspension or, for a permanent expulsion, the fact that it is permanent
- information about parents' right to make representations and how these should be made about the suspension or permanent expulsion to the governing board
- how the pupil may be involved in this; and
- where there is a legal requirement for the governing board to meet to consider the reinstatement of a pupil, and that parents have a right to attend a meeting, be represented at a meeting (at their own expense) and to bring a friend.

The headteacher will also notify parents by the end of the afternoon session on the day their child is suspended or permanently excluded that for the first 5 school days of a suspension or permanent expulsion, or at the start date of any alternative provision where this is earlier. For the suspension, the headteacher is responsible for providing suitable work that the pupil can practically complete at home and for this work to be marked if required.

Parents are legally required to ensure that their child is not present in a public place during school hours without a good reason. Parents may be given a fixed penalty notice or prosecuted if they fail to do this.

If alternative provision is being arranged, the following information will be included when notifying parents of a suspension or permanent expulsion:

- the start date for any provision of full-time education that has been arranged
- the start and finish times of any such provision, including the times for morning and afternoon sessions, where relevant
- the address at which the provision will take place
- any information required by the pupil to identify the person they should report to on the first day.

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

Informing the governing board and local authority
The headteacher will immediately notify the Academy Governing Board, the Director of Schools and the local authority (LA) of Nottingham City.

- a permanent expulsion, including when a suspension is followed by a permanent expulsion being issued
- suspension which would result in the pupil being suspended for more than 5 school days (or more than 10 lunchtimes) in a term
- suspensions which would result in the pupil missing a public examination

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

For all other suspensions, the headteacher will notify the Academy Governing Board once a term and the Director of Schools at the time of the suspension.

5.2 The Academy Governing Board (AGB) and Exclusion Panel

Responsibilities regarding suspensions and permanent expulsions is delegated to a Suspension and Exclusion Panel consisting of at least 3 governors taken from the nominated governors across the L.E.A.D Academies.
The Suspension and Exclusion Panel has a duty to consider the reinstatement of a suspended or permanently excluded pupil (see section 6).

Within 14 days of receipt of a request, the governing board will provide the Secretary of State with information about any exclusions in the last 12 months.

5.3 Sixth Day Provision

Where a child receives a cumulative period of suspension of more than 5 days then education must be arranged no later than the sixth day. Every attempt to provide local arrangements should be explored to ensure a pupil receives full time education as soon as is practicable if it is likely that a longer suspension is likely. (For example, during a period of investigation where more information is being gathered).

For secondary schools only:

Provision does not have to be arranged for pupils in the final year of compulsory education who do not have any further public examinations to sit. (See para.50)

Where it is not possible or not appropriate to arrange alternative provision during the first five days the academy should take reasonable steps to set and mark work. The work should be accessible and achievable.

5.4 The Local Authority

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

6. Considering the reinstatement of a pupil

The Exclusion Panel will consider the reinstatement of an suspended or permanently expelled pupil within 15 school days of receiving the notice of the suspension or permanent expulsion if:

- the expulsion is permanent
- it is a suspension which would bring the pupil's total number of school days of suspension to more than 15 in a term
- it would result in a pupil missing a public examination

If requested to do so by parents, the Exclusion Panel consider the reinstatement of an suspended pupil within 50 school days of receiving notice of the suspension if the pupil would be suspended from school for more than 5 school days, but less than 15, in a single term.

Where a suspension would result in a pupil missing a public examination, the Exclusion Panel will consider the reinstatement of the pupil before the date of the examination. If this is not practicable, the Exclusion Panel will consider the suspension and decide whether or not to reinstate the pupil.

Parents (or where requested a representative or friend) must be invited to the meeting of the governing board panel and allowed to make representations.

The Exclusion Panel must make reasonable endeavours to arrange a meeting that is convenient for all parties and compliant with the relevant statutory time limits. The decision will not be invalid simply on the grounds of not meeting time limits. (See para 59)

For a suspension not exceeding five days in a term the governing board must still consider arrangements for allowing parents/carers to make representations. The governing board cannot direct reinstatement and is not required to arrange a meeting with parents.

The Exclusion Panel can either:

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

The Exclusion Panel should:

- not discuss the suspension with any party outside the meeting
- ask for any written evidence in advance of the meeting including witness statements and other relevant information relating to a pupil's SEN
- circulate the written evidence to all parties at least five school days advance (where possible)

- allow the parent and the pupil to be accompanied by a friend or representative
- provide reasonable adjustments if a parent or the pupil has a disability which may impact upon their ability to attend the meeting or make representations
- allow the pupil to attend the meeting and speak on their own behalf.

In reaching a decision, the Exclusion Panel will consider whether the suspension or permanent expulsion was lawful, reasonable and procedurally fair and whether the headteacher followed their legal duties. They will decide whether or not a fact is true 'on the balance of probabilities', which differs from the criminal standard of 'beyond reasonable doubt', as well as any evidence that was presented in relation to the decision to suspend or permanently exclude.

Minutes will be taken of the meeting, and a record of evidence considered kept. The outcome will also be recorded on the pupil's educational record.

The Exclusion Panel will notify, in writing, the headteacher, parents and the LA of its decision, along with reasons for its decision, without delay.

Where an expulsion is permanent, the Exclusion Panel's decision will also include the following:

- The fact that the expulsion is permanent
- Notice of parents' right to ask for the decision to be reviewed by an independent review panel, and:
    - the date by which an application for an independent review must be made
    - the name and address to whom an application for a review should be submitted
    - that any application should set out the grounds on which it is being made and that, where appropriate, reference to how the pupil's SEN are considered to be relevant to the expulsion
    - that, regardless of whether the excluded pupil has recognised SEN, parents have a right to require the academy trust to appoint an SEN expert to attend the review
    - details of the role of the SEN expert and that there would be no cost to parents for this appointment
    - that parents must make clear if they wish for an SEN expert to be appointed in any application for a review
    - that parents may, at their own expense, appoint someone to make written and/or oral representations to the panel, and parents may also bring a friend to the review
- That if parents believe that the expulsion has occurred as a result of discrimination, they may make a claim under the Equality Act 2010 to the first-tier tribunal (special educational needs and disability), in the case of disability discrimination, or the county court, in the case of other forms of discrimination. A claim of discrimination made under these routes should be lodged within 6 months of the date on which the discrimination is alleged to have taken place.

7. An independent review

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

Applications for an independent review must be made within 15 school days of notice being given to the parents by the exclusion panel of its decision to not reinstate a pupil.

A panel of 3 or 5 members will be constituted with representatives from each of the categories below. Where a 5-member panel is constituted, 2 members will come from the school governor's category and 2 members will come from the headteacher category.

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

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

- Are a member/director of the academy trust, or governing board of the excluding school.
- Are the headteacher of the excluding school, or have held this position in the last 5 years.
- Are an employee of the academy trust, or the governing board, of the excluding school (unless they are employed as a headteacher at another school).
- Have, or at any time have had, any connection with the academy trust, school, governing board, parents or pupil, or the incident leading to the expulsion, which might reasonably be taken to raise doubts about their impartially.
- Have not had the required training within the last 2 years (see appendix 1 for what training must cover).

A clerk will be appointed to the panel.

The independent panel will decide one of the following:

- Uphold the governing board's decision.
- Recommend that the governing board reconsiders reinstatement.
- Quash the governing board's decision and direct that they reconsider reinstatement (only when the decision is judged to be flawed).

The panel's decision can be decided by a majority vote. In the case of a tied decision, the chair has the casting vote.

8. School registers

A pupil's name will be removed from the school admissions register if:

- 15 school days have passed since the parents were notified of the Exclusion Panel's decision to not reinstate the pupil and no application has been made for an independent review panel, or
- The parents have stated in writing that they will not be applying for an independent review panel.

Where an application for an independent review has been made, the governing board will wait until that review has concluded before removing a pupil's name from the register.

Where alternative provision has been made for a suspended or permanently excluded pupil and they attend it, code B (education off-site) or code D (dual registration) will be used on the attendance register.

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

9. Returning from a suspension

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

The following measures may be implemented when a pupil returns from a suspension:

- Agreeing a behaviour contract
- Putting a pupil 'on report'
- Internal isolation
- Daily reporting/communication book to parents

10. Monitoring arrangements

The Director of Schools monitors the number of suspensions and permanent expulsions every term and reports back to the Academy Governing Board and the Trust through the School Performance QA Review Reports.

This policy will be reviewed by the Deputy CEO (Education) every 3 years or earlier in response to DfE guidance. At every review, the policy will be shared with the Academy Headteachers, the AGBs and the Trust.

11. Links with other policies

This exclusions policy is linked to academy

- Behaviour policies
- SEN policies and information report.