



# Exclusions Policy

## PURPOSE

This policy outlines the key principles, roles and responsibilities for exclusions in all Ark schools, in line with statutory guidance.

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|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------|--------------------|------------------------|
| Date of last review: | September 2021                                                                                                                             | Author:            | Governance Manager     |
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| Type of policy:      | <input checked="" type="checkbox"/> Network-wide<br><input type="checkbox"/> Set for school<br><input type="checkbox"/> Tailored by school | Approval:          | Management Team        |
| School:              | All Ark Schools                                                                                                                            | Key Contact Name:  | Governance Team        |
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## POSITIONING WITHIN ARK OPERATIONAL MODEL

| Component                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Element    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| <input type="checkbox"/> Strategic Leadership & Planning<br><input type="checkbox"/> Monitoring, Reporting & Data<br><input type="checkbox"/> Governance & Accountabilities<br><input type="checkbox"/> Teaching & Learning<br><input type="checkbox"/> Curriculum & Assessment<br><input checked="" type="checkbox"/> Culture, Ethos & Wellbeing<br><input type="checkbox"/> Pathways & Enrichment<br><input type="checkbox"/> Parents & Community<br><input type="checkbox"/> Finance, IT & Estates<br><input type="checkbox"/> Our People | Exclusions |

## Introduction

All Ark schools must ensure that their exclusion procedures comply with statutory guidance from the Department for Education (DfE), last updated in September 2017.<sup>1</sup> As such, this policy supersedes all other school-level handbook or policy statements as relate to exclusions.

## Aims

All parties involved in exclusions, including Principals, parents, governing bodies and Independent Review Panels, must have regard to the statutory guidance. This policy outlines the key principles, roles and responsibilities around exclusion to ensure that all exclusion proceedings are conducted in line with statutory guidance.

Further guidance is available for parents, governors and Principals on procedural matters relating to exclusions, available on the Ark Library and from the central governance team.

## Suspensions<sup>2</sup> and Permanent Exclusions

Exclusion can only be for a breach of a school's behaviour policy, which must be published on the school's website and proactively shared with pupils and parents. It is important that all pupils understand the school's expectations of behaviour and the consequences for non-compliance.

There are two types of exclusion: suspension (also known as 'fixed term') and permanent.

Suspensions must only be given for a breach of the behaviour policy and must always be processed and recorded as a formal exclusion. This includes any short period of time when the pupil is excluded, such as lunchtimes or being sent home early. There is a maximum limit of 45 school days in an academic year for suspensions.

Permanent exclusions may be in response to persistent breaches of the behaviour policy *or* for a one-off serious breach of the behaviour policy, *and* where allowing the pupil to remain in school will be detrimental to the education and welfare of the pupil and/or others at the academy. Permanent exclusion must be a last resort, and Principals must consider alternative arrangements (such as a managed move) before permanently excluding any pupil. See the section 'The Principal's role in exclusions' below for further details about the decision-making process for permanent exclusions.

The law does not allow for 'converting' a suspension into a permanent exclusion. In exceptional circumstances, such as cases involving a serious breach of the behaviour policy where additional evidence (including mitigating evidence) is required before making a decision, the school may issue a suspension pending investigation. Following investigation, the school may issue a further separate suspension to begin immediately after the first suspension ends *or* a separate permanent exclusion to begin immediately after the end of the suspension.

## The Right to Education

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<sup>1</sup> Department for Education publication – *Exclusion from Maintained Schools, Academies and Pupil Referral Units in England- Statutory Guidance for those with Legal Responsibilities in Relation to Exclusion* (2017). Available online at <https://www.gov.uk/government/publications/school-exclusion>.

<sup>2</sup> From September 2021, the Department for Education (DfE) and Ofsted adopted the term 'suspension' instead of 'fixed term exclusion'. Throughout this policy any reference to 'suspension' is referring to a 'fixed term exclusion' as defined by the statutory guidance.

All pupils have a right to education and schools remain responsible for the education and welfare of all pupils on their roll up to the point when they are formally removed.

For any exclusion involving a pupil who is a Looked After Child, the school and Local Authority must work together to arrange alternative provision from the first day of exclusion.

For all other pupils, the school must set work, and have it marked, for the first five days of exclusion. From day six onwards, alternative provision must be arranged. For permanent exclusion, the local authority is responsible for arranging this and for suspensions, the school is responsible. Schools must carefully assess and monitor the quality of the alternative educational provision and ensure appropriate safeguarding measures are in place.

## **Equalities Legislation**

Under the Equality Act 2010, pupils must not be discriminated against, victimised or bullied because of protected characteristics. This includes ensuring that policies and practices do not discriminate by unfairly increasing a pupil's risk of exclusion. Pupils with Special Educational Needs and Disabilities (SEND) are particularly at risk of this, and schools should be proactive to make reasonable adjustments to policy and practice, where needed, to avoid discrimination.

## **The Principal's Role in Exclusions**

Only the Principal or acting Principal may exclude a pupil, and only for disciplinary reasons.

Principals should ensure that the school's behaviour policy is regularly reviewed, taking into account the views of stakeholders including pupils, parents, staff and governors, and published on the school website. Schools must also ensure that pupils understand the expectations within the behaviour policy and the potential consequences for non-compliance. This goes beyond publishing the policy on the website and should include proactive work with pupils to secure their understanding.

Where an excluded pupil has SEND, the school must demonstrate that they have met the requirements of the SEND Code of Practice. This includes relevant assessments to determine whether disruptive behaviour could be caused by underlying unmet needs, and a range of provision and support put in place to meet any need. If a pupil has an Education, Health and Care Plan (EHCP) and they are at risk of permanent exclusion, the school should request an emergency EHCP review.

Where any pupil has received multiple suspensions or is approaching the legal limit of 15 school days in a term or 45 school days of suspension in an academic year, the Principal should consider whether exclusion is providing an effective sanction.

Permanent exclusion should only be used as a last resort either where a single incident is so serious there is no alternative available or in the case of multiple incidents where all alternatives have been considered and all strategies to change behaviour have failed. It must be demonstrated that allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the academy. To safeguard this practice, all Ark Schools Principals must discuss their decision to permanently exclude a pupil with their Regional Director before issuing the permanent exclusion.

## Duty to Inform Parents

Parents/carers must be informed **without delay** of the length and type of exclusion, the reason(s) for exclusion<sup>3</sup> and of their right to make representations to the governors. Ideally, this notification should be by telephone or in person in the first instance, followed by a letter. In all circumstances, the parent/carer must be informed in writing. All Ark schools must use the template letters with attached exclusions guidance for parents, available on the Ark Library, as these are compliant to current statutory regulations.

Pupils over 18 must be informed in writing and have the right to appeal on their own behalf. Schools have a duty of care for the welfare of all pupils and so must advise parent(s)/ carer(s) of an exclusion *prior* to the pupil being sent off-site.

## Reporting and Recording Exclusions

Schools must follow statutory guidance to ensure the relevant local authorities are informed when a pupil is permanently excluded. They must also ensure all exclusions are recorded on the school's Management Information System (MIS) and that the Governance Team are informed of any occasions when a governor review panel is required. Exclusions must also be reported to governors in the Principal's Report at the Local Governing Body meeting. Staff and Governors must comply with all relevant data protection requirements when processing, sharing and storing personal data as part of the exclusions process.

## Review of the Decision to Exclude

For any exclusion, parents/carers have the right to make their representations to governors. The degree and length of exclusion determines the process and timeframe for governor review.

- i. All permanent exclusions **must** be reviewed by a panel of governors **within fifteen school days** of the exclusion being issued.
- ii. Suspensions, of any length, that would result in a pupil missing a public examination or national curriculum test **must** be reviewed by a governor panel **as soon as practically possible and at maximum within fifteen school days**. In exceptional circumstances, the Chair of Governors may review the exclusion on behalf of the Local Governing Body.
- iii. Suspensions that result in a pupil being excluded for more than fifteen days in one academic term **must** be reviewed by a panel of governors **within fifteen school days** of the exclusion being issued.
- iv. *If requested by the parent/carer*, a suspension of five to fifteen days must be reviewed by a governor panel **within fifty school days** of the exclusion being issued.
- v. *If requested by the parent/carer*, for a suspension of less than five days, governors must consider any representations made by the parent/carer but do not have to meet to do so, and do not have the power to reinstate the pupil.

A governor review panel may be constituted from members of the school's Local Governing Body and/or governors at another Ark school. All governors must have received specific training from the central Governance Team prior to participating on a panel. A panel will usually be constituted of three governors and a member of the governance team will be the

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<sup>3</sup> The reasons for exclusion should give brief detail of the alleged behaviour, for example 'swearing at a member of staff', and not just state 'breach of behaviour policy'.

panel clerk (usually the school's Clerk of Governors or Regional Officer). One governor on the panel will be designated as the Chair of the meeting and, in the event of a request for external independent review (see section below entitled *Independent Review Panel*), will represent the panel at that independent review meeting. The Principal cannot be a member of the panel.

Members of the panel must be impartial, unprejudiced, have taken no previous part in the specific case, and have no personal interest in its result. As standard practice, Principals must not discuss individual exclusions with members of their governing body as cases may be referred to them for review.

The review panel may either **decline to reinstate the pupil** (upholding the Principal's decision) or **direct reinstatement of the pupil**. The panel cannot convert one type of exclusion into another, for example; they cannot 'downgrade' a permanent exclusion into a suspension.

After the governor review hearing, the Clerk will inform the parties in writing about the result, with reasons for the decision. Decisions are communicated as soon as possible and every attempt is made to do this within 5 working days.

### **Standard of Review and Evidence**

At all stages in the exclusion process, from the Principal's initial decision to the independent review panel, the civil standard of a 'balance of probability' is used when considering facts and evidence. This has a lower threshold than the criminal standard of review, 'beyond all reasonable doubt'.

The Principal or review panel must ensure that all parties have an opportunity to make their representations and have their views heard before any decision is made. It is important that the evidence presented to panels demonstrates this or gives a reasonable explanation for why another party's views are not available. Additional guidance is available to Principals on gathering evidence and the panel paperwork.

### **Panel Hearings**

All evidence and panel paperwork must be distributed to all parties at least five working days before the hearing. In exceptional circumstances and at the discretion of the Chair, new evidence may be introduced at the hearing however all parties must be given reasonable time to review it.

No party should be in the presence of the panel unless the other party is also present. Both the school and parents/carers should enter and leave the panel meeting at the same time and must not have any private discussion with the panel before the meeting or until after the panel have reached a formal decision.

### **Independent Review Panel**

If a permanent exclusion is upheld, parents/carers must be informed of their right to seek an independent review of the panel's decision and the deadline for seeking such a review. They also have the right to request the attendance of a SEND expert at the Independent Review Panel meeting. The request for an independent review panel must be submitted within fifteen school days from receiving the review panel's decision.

Ark Schools will engage the services of an external clerking agency to arrange and clerk the Independent Review Panel. The independent review is normally attended by the Principal and Chair of the original governor panel. The Clerk of the governor panel may attend but plays no formal part in proceedings. On occasion it may be considered appropriate for the school to have legal representation. This will be arranged by Ark Schools.

The Independent Review Panel cannot direct a governing body to re-instate a pupil. It may:

- a) uphold the exclusion;
- b) recommend that the original panel reconsider its decision; or
- c) quash the original panel's decision and direct the panel to reconsider its decision.

In the latter case, the Independent Review Panel will then usually order that the school must make a payment to the Local Authority of £4,000 if it does not offer to reinstate the pupil.

### **Parallel police proceedings**

The governing body has no power to delay a hearing beyond the statutory time limit because of police proceedings. If a permanent exclusion is upheld in these circumstances, the parent has 15 days to request an independent review in the normal way.

### **Other relevant legislation and guidance**

The principal legislation, guidance and regulations to which this guidance relates is:

- Education Act 2002, as amended by the Education Act 2011;
- School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012;
- Education and Inspections Act 2006;
- Education Act 1996; and
- 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;
- Exclusion from Maintained Schools, Academies and Pupil Referral Units in England - Statutory Guidance for those with Legal Responsibilities in Relation to Exclusion (September 2017)
- School attendance: Guidance for maintained schools, academies, independent schools and local authorities (November 2016)
- SEND code of practice: 0 to 25 years (updated 1 May 2015);
- Special Educational Needs and Disability Regulations 2014 (Part 4); and
- Equality Act (2010).