

# Policy B6 Exclusions

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## Introduction

- 1.1. This document outlines the University of Brighton Academies Trust's policy relating to the exclusion of pupils from its academies. It draws on the department for Education's *'Exclusion from maintained schools, academies and student referral units in England: Statutory guidance for those with legal responsibilities in relation to exclusion'* (2017)<sup>1</sup>. This policy is complemented by separate procedural guidance, which is also based on the above document.
- 1.2. The trust has the highest expectations of its pupils, staff and parents/carers; our vision is for all stakeholders to be confident, responsible, and successful and to live with integrity. This will enable our pupils to be well-prepared for the next phase of their educational journey; we treat every pupil as an individual and we work with them and their families to develop and nurture their talents.

## 2. Rationale

- 2.1. Good behaviour is best maintained by the effort of pupils, parents/carers and staff working together to ensure adherence to the trust's ethos and observance of each academy's behaviour policy, to ensure that all members of the academy community can enjoy a safe and productive learning environment. In the interest of keeping good discipline and as a result of serious offences, it is sometimes necessary for a principal<sup>2</sup> to exclude a pupil from an academy. This is a serious step to take but it reflects the importance of respect for the academy's values and its members, if a pupil is to continue to be part of this community.

## 3. What is exclusion?

- 3.1. Exclusion from an academy operates within a framework set down in law and in accordance with guidance from the DfE. Exclusion is the formal removal of a pupil/student from an academy and has to be authorised by the principal of the academy.
- 3.2. Exclusion can give a pupil space to reflect on their behaviour and its impact on their community; it acts as a deterrent to other pupils and clearly communicates the values upon which the trust and academies are based.
- 3.3. There are two types of exclusion:
  - (i) Fixed Term - up to a maximum of 45 days in one academy year
  - (ii) Permanent – where a pupil is permanently excluded from the academy

## 4. When is exclusion used?

- 4.1. Exclusions can only be used for a breach of the academy's Behaviour Policy. Permanent exclusion can be used for serious "one-off" offences such as:
  - Serious actual or threatened violence against a pupil or a member of staff
  - Activities involving drugs or substance abuse
  - Criminal offences
  - Bringing offensive weapons onto the academy site
  - Sexual abuse or sexual assault
  - Repeated breaches of the academies' behaviour policies (persistent lateness, truancy, minor incidents may constitute grounds for exclusion)

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<sup>1</sup> Available here: <https://www.gov.uk/government/publications/school-exclusion>

<sup>2</sup> For the purposes of this document, 'Principal' means Principal, Associate Principal, Executive Principal, Acting Principal, Head of School/Academy or, in the Principal's absence, the most senior teacher who is acting in the role of Principal.

- 4.2. Only a principal can exclude a pupil/student and when doing so s/he should judge each case on its own merits as well as bearing in mind continuity of sanction for similar incidents in the past. When establishing the facts in relation to exclusion the principal must apply the civil standard of proof and not the criminal standard of “beyond reasonable doubt”. This means that if something is more likely than not to have occurred (“on the balance of probabilities”) then the standard is met.
- 4.3. **All decisions to exclude a pupil must be lawful, reasonable and fair.**
5. **Equality**
- 5.1. Under the Equality Act 2010, academies will not discriminate against, harass, or victimise pupils because of their gender, race, disability, religion or belief, sexual orientation, pregnancy/maternity or gender reassignment. Reasonable adjustments will also be made to policies and practices, with regard to disabled pupils.
6. **When is exclusion inappropriate/unlawful?**
- 6.1. It is unlawful to exclude a pupil for:
- Poor academic performance
  - Pregnancy
  - Breaches of academy uniform rules or rules on appearance (including jewellery and hairstyle), except where these are persistent and in open defiance of such rules.
  - Punishing a pupil for the behaviour of their parents, for example where parents refuse, or are unable, to attend a meeting.
  - Minor breaches of an academy’s code of conduct
- 6.2. It is unlawful to exclude or to increase the severity of exclusion for a non-disciplinary reason. For example, it would be unlawful to exclude a pupil simply because they have additional needs or a disability that the academy feels it is unable to meet.
7. **Can pupils be excluded informally or unofficially?**
- 7.1. If the principal is satisfied that, on the balance of probabilities, a pupil has committed a disciplinary offence and needs to be removed from the academy site for that reason, **formal exclusion is the only legal method of removal. Informal or unofficial exclusions are illegal regardless of whether they are done with the agreement of parents.**
- 7.2. Where a pupil is sent home for disciplinary reasons for part of a school day, some principals have viewed this as a ‘cooling off’ period and have not formally excluded the pupil. **There is no basis in law for this.** If a pupil is sent home in response to a breach of discipline, even for a short period of time, this must be formally recorded as exclusion. In every instance where a pupil is sent home for disciplinary reasons, the principal must formally record and specify the length of the exclusion (for reporting purposes this should be recorded as a half day or whole day).
- 7.3. They should ensure that:
- They are meeting their legal duty of care towards the pupil and the parent/carer is formally notified of the exclusion
  - Child protection issues are considered e.g. bearing in mind the pupil’s age and vulnerability, that a parent/carer is at home and the pupil is not placed at risk by, for example, being left to wander the streets
  - Work is sent home or alternative provision is arranged
8. **What happens after exclusion?**
- 8.1. Arrangements for the education of a permanently excluded pupil are the responsibility of the Local Authority. For fixed-term exclusions:
- A reintegration meeting involving the pupil, parents/carers and key staff will be arranged
  - A phased reintegration will normally be expected

- Strategies designed to prevent further exclusion will be agreed, these will be formalised in a Pastoral Support Plan for a pupil who is considered because of their behaviour to be at risk of permanent exclusion

## **9. How are Local Board members and the Trust's Board of Trustees involved?**

- 9.1. The Trust has delegated to Local Board members the responsibility of considering parents' representations about an exclusion.
- 9.2. Each Local Board has an exclusions panel which must consider the reinstatement of an excluded pupil within 15 school days of receiving notice of the exclusion if:
- The exclusion is permanent;
  - it is a fixed period exclusion which would bring the pupil's total number of school days to more than 15 in a term; or
  - it would result in a pupil missing a public examination or national curriculum test.
- 9.3. Where parents/carers request, the panel must consider representations concerning exclusions for 5 days or less; in addition, the panel will meet to consider exclusions of between 6 and 15 days, if requested by parents/carers.
- 9.4. In the event of an independent review panel directing or recommending that a decision to decline reinstatement of an excluded pupil is reconsidered by the Local Board the exclusions panel will reconvene within 10 school days.
- 9.5. Local Board members will monitor exclusions in their academy termly. Local Board members may be involved in some reintegration meetings, especially if a pupil has been excluded on several previous occasions.
- 9.6. The Trust's Board of Trustees or its committees
- Regularly review the Exclusions Policy
  - Monitor exclusions through reports submitted by each academy
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- 9.7. Director of Policy and Governance or nominee:
- Arranges training for members of exclusion panels, arrange clerking services and offer advice on a case-by-case basis
  - Attends exclusion panels as required
  - Advises parents/carers and the academy on matters of law and DfE guidance

## **10. What are the alternatives to formal exclusion?**

- 10.1. Exclusion is a serious step for the academy to take. Other strategies are used in conjunction with, or as an alternative to, formal exclusion to support a positive ethos in the academy. Guidance stipulates that exclusion should not be used if there are possible alternatives available. The four examples that are given are:
- A restorative justice process
  - Internal exclusion
  - A managed move to another school, in conjunction and with the agreement of that school
  - Mediation through a third party
- 10.2. Parents/carers will never be pressured into removing a pupil from an academy under threat of permanent exclusion, nor should a pupil's name be deleted from the academy roll on disciplinary grounds unless the formal permanent exclusion procedures have been adhered to or unless a managed move has been agreed by all relevant parties.

## 11. Can pupils be withdrawn from lessons/activities?

- 11.1. In cases where it is deemed that to have a pupil in a lesson or activity would be detrimental to the learning or well-being of others, that pupil may be required to work separately under the supervision of another member of staff for a period or several periods.
- 11.2. A pupil may be excluded from the academy for the duration of the lunchtime period. A lunchtime exclusion is a fixed-term exclusion (lunchtime exclusions are counted as half a day for statistical purposes and in determining whether an Exclusions Panel meeting is triggered) – the appropriate exclusion letter should be sent out (per the number of days a pupil has missed in the term) and parents/carers have the same right to make representations to the academy’s Exclusions Panel. Lunchtime exclusions (like any other exclusion) cannot be indefinite.
- 11.3. Arrangements must be made for a pupil who is entitled to free school meals (i.e. providing a packed lunch). A lunchtime exclusion should not be enforced if doing so will put the pupil at risk.

## 12. What support is available to pupils at risk of exclusion?

- 12.1. Each academy employs a range of strategies to support pupils whose behaviour over a period of time presents a high risk of exclusion (i.e. not “one-off” offences). This includes:
- Regular monitoring by and contact with key staff
  - Placement on the SEN register with associated support
  - Regular meetings with pupils and parents/carers
  - Access to external agency support
  - Review of curriculum provision, including an alternative curriculum
  - Managed move (short- or long-term) to another school/academy with parental consent
- 12.2. The nature of support will be personalised according to the needs of each pupil and will be influenced by the availability of resources. Parental support is crucial to the success of intervention strategies.

## 13. Appendices

- Appendix 1 – Looked After Children and Pupils with Special Educational Needs
- Appendix 2 – Police involvement and criminal proceedings

## 14. Policy status and review

<b>Written by:</b>	Trust Clerk
<b>Owner:</b>	Director of Policy and Governance
<b>Status:</b>	V2 – APPROVED V3 = APPROVED
<b>Approval date:</b>	V2 – 26/1/17 (HAT RC); 22/3/17 (UoBAT BoD) V3 – Education & Standards 19 September 2017
<b>Review Date:</b>	As required or 2021/22

## Appendix 1 – Exclusion of pupils from groups with disproportionately high rates of exclusion

“ The exclusion rates for certain groups of pupils are consistently higher than average. This includes: pupils with SEN; pupils eligible for free school meals; looked after children; and pupils from certain ethnic groups”

“As well as having disproportionately high rates of exclusion, there are certain groups of pupils with additional needs who are particularly vulnerable to the impacts of exclusion. This includes pupils with EHC plans and looked after children. **The head teacher should, as far as possible, avoid permanently excluding any pupil with an EHC plan or a looked after child.**”

### 1. Looked After Children

- 1.1. Looked After Children, as defined by the Children Act 1989, are either looked after or in the care of a local authority, or have been provided with accommodation for more than 24 hours by a local authority.
- 1.2. Children in care are no less able than other pupils but they often underachieve because they fall behind through missing school. Many children in care have unmet social and emotional needs and, as a group, are more likely to be at risk of exclusion. Academies are expected to support proactively and co-operate with foster carers and the Local Authority as a corporate parent in doing everything possible to avoid excluding a looked-after child.
- 1.3. Exclusion of children in care should be an absolute last resort. It is vital that Academies and the Local Authority work together in partnership with other professionals and try every practicable means to maintain them in the academy and to exclude them only in the most exceptional circumstances.
- 1.4. When a looked-after child is in danger of exclusion the Local Authority should be informed and, where necessary, involved at the earliest opportunity. The Local Authority may then offer advice on what additional assessment and support (such as additional help for the classroom teacher, one-to-one therapeutic work or a suitable alternative placement) may be helpful in preventing the need for exclusion.
- 1.5. The role of Designated Teacher for Looked After Children in each Academy is central to liaising with the Local Authority, involving other Children’s Services and, where appropriate, securing additional support. In cases where a child or young person in care is excluded, anyone who is legally defined as a parent will have the right to make representations and to appeal.
- 1.6. Even where the Local Authority does not have parental responsibility, (i.e. where the child is accommodated under Section 20 of the Children Act 1989 but is not the subject of a care order) the child’s social worker should be involved at the earliest opportunity about the possibility of any exclusion. The Designated Teacher for Looked After Children will be able to advise on the legal status of pupils in public care in the academy.

### 2. Pupils with Special Educational Needs

- 2.1. The Principal must take account of the academy’s statutory duties in relation to special educational needs when administering the exclusion process. This includes having regard to the SEND Code of Practice.
- 2.2. Other than in the most exceptional circumstances, Academies should avoid permanently excluding pupils with statements or Educational Health and Care Plans (EHC Plan). The statutory assessment and review processes provide other opportunities for reviewing the appropriateness of the provision being made to meet the pupils’ needs and their placement.
- 2.3. Where a pupil presents particularly challenging behaviour, Academies should hold an interim review of the pupil’s statement or EHC Plan. The Academy should discuss with the Local Authority the need for an officer to attend. If it is deemed necessary for the pupil to be excluded, Academies

should consider issuing an extended, fixed-term exclusion, bearing in mind the requirement for full-time educational provision from day 6 of the exclusion. The review paperwork should be completed in full and sent to the SEN team at the Local Authority.

2.4. The possible outcomes could be:

- Existing support with modifications to provision
- Additional support to be provided to maintain the current school placement
- As above and referral to be made to an appropriate, alternative school, following discussion and agreement with parents/carers

2.5. Academies should be aware that the search for an alternative school, if considered appropriate, can be a lengthy process. In some cases, it is important to try and maintain the current school place, if possible, in the meantime. It remains the responsibility of the school named on the statement/EHC Plan to ensure that provision continues for any statemented pupil.

## **2.6. Discrimination**

2.6.1. Under the Equality Act 2010 Academies must not discriminate against, harass or victimise pupils because of their sex, race, disability, religion, belief, sexual orientation, pregnancy/maternity or because of a gender reassignment. For disabled children, this includes a duty to make reasonable adjustments to policies and practices.

2.6.2. The public-sector Equality duty means that, in carrying out their functions, academies must also have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and other conduct that is prohibited by the Equality Act
- Advance equality of opportunity between people who share a protected characteristic and people who do not
- Foster good relations between people who share a protected characteristic and people who do not; by having due regard to the need to tackle prejudice and promote understanding

2.6.3. Academies have a legal duty under the Disability Discrimination Act 1995 not to discriminate against disabled pupils by excluding them (fixed term or permanently) because of their disability. Disability includes pupils with diagnosed conditions such as ADHD, ASD, Tourette's syndrome and dyspraxia.

2.6.4. Parents of pupils with a disability can appeal against ALL exclusions based on discrimination. Appeals against permanent exclusions are heard by Independent Review Panels and appeals against fixed-term exclusions are heard by the First-tier Tribunal (Special Educational Needs and Disability)

## **3. Pupils from certain ethnic groups**

3.1 The ethnic groups with the highest rates of exclusion are: Gypsy/Roma; Travellers of Irish Heritage; and Caribbean pupils. Principals should consider approaches for early intervention and should also consider what extra support might be needed to identify and address the needs of pupils from these groups in order to reduce their risk of exclusion e.g. Travellers Education Services.

## Appendix 2 - Police involvement and criminal proceedings

1. In some circumstances, an incident in an Academy may also be the subject of a police investigation, which may or may not result in criminal proceedings. The implication for this is that the evidence available to The Principal, Exclusions Panel and Independent Review Panel is very limited (e.g. witness statements may not be available).
2. A Principal need not postpone his/her decision to exclude in such circumstances. A judgement must be made based on the evidence that is available and should consider any additional steps they may need to take to ensure that the decision to exclude is fair. The Academy's Exclusions Panel has no power to adjourn and consider beyond the statutory time limit. Therefore, the Exclusions Panel must decide with the same constraints on the evidence available.
3. An Independent Review Panel may decide to adjourn if they feel that the progress of the appeal will benefit from doing so (e.g. if they feel that they need access to relevant witnesses/statements). An IRP can adjourn more than once if deemed necessary. In the meantime, the pupil will remain on the roll of the academy and the local authority will make alternative provision available.