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Excluding Pupils

This policy is applicable to all pupils, including those in the EYFS.

Pupil exclusions rank as one of the most difficult and stressful decisions a school must from time to time take. All schools have the legal right to impose reasonable sanctions if a pupil misbehaves. Physical punishment is illegal; but DCFS guidance advises that sanctions that a school might use include: a reprimand, a letter to parents or guardians, removal from a class or group, loss of privileges, confiscation of a possession that is inappropriate in the classroom, detention, or exclusion. Exclusion, whether temporary or permanent, is a last resort. Permanent exclusion is used only in the most serious circumstances. Independent schools are required to have discipline and exclusions policies that are accessible to parents and pupils (in, for example, the parent handbook). A proper exclusion procedure, operated fairly, will reduce the likelihood of appeals and claims.

THE LAW

Independent schools operate parallel to, but outside of, the state sector. As such they have responsibility for their own conduct and governance, relatively free from the statutes and government guidance that constrain the state sector. Nevertheless, independent schools do not operate in a legal vacuum and should always bear the following issues in mind when contemplating or effecting a pupil exclusion.

Education Act 2002

The Education Act 2002 restated the registration system for independent schools and made provision for the introduction of standards against which school inspections would be carried out. These include a policy to promote good behaviour amongst pupils and setting out the sanctions to be adopted in the event of pupil misbehaviour. In addition, the standards require schools to handle parental complaints in a particular manner and to have in place a written complaints procedure. These standards, which schools are now expected to meet, will obviously have a bearing on how schools handle serious disciplinary incidents and challenges from parents.

The School-Parent Contract

The school-parent contract underpins the entire relationship between a school, its pupils and their parents and is fundamentally important to the way in which the exclusion process operates.

Bad Behaviour

A non-exhaustive list of the sorts of behaviour that could merit exclusion includes the following:

- Physical assault against pupils or adults
- Verbal abuse/threatening behaviour against pupils or adults
- Child on child abuse
- Bullying
- Racist abuse
- Sexual misconduct
- Drug and alcohol misuse
- Damage to property
- Theft
- Persistent disruptive behaviour
- Parental behaviour
 - Smoking/vaping
 - Internet/Social Media abuse

Conversely, the sorts of behaviour that should not normally justify an exclusion (at least for a first offence) would include:

- Lateness or truancy
- Poor academic performance
- Breaches of school uniform rules.

THE PROCEDURE

The First Steps

When a potential exclusion presents itself, some key considerations are as follows:

- What exactly is the allegation?

Clarity at this stage is essential, not least because the pupil must be informed of the case against them. For example, if the allegation is that pupil A stole from pupil B, pupil A should be told all the elements of this (i.e. the identity of the other pupil, what was allegedly stolen, when and where) and asked to explain what happened.

- What information is available and what further information is required?
Consider what evidence is already available to support the allegation. Next, consider what additional information is required and how best to obtain it.
- Is anyone at risk (i.e. do the police or social services need to be informed?)
This is an important issue that needs to be addressed.
- Who should be dealing with this?

Where possible, a different person should conduct each of the following stages:

- interviews with witnesses and general investigation of the allegations,
- the hearing; and
- the appeal.

It will generally make sense for the investigation to be carried out by the relevant form teacher, head of department, one of the Deputy Heads, for the hearing to be conducted by the Head and for any appeal to be held by the governors.

Investigation

Of all the procedural steps, the investigation stage is perhaps the one that schools most often get wrong. Key issues are as follows:

- Information Gathering

Before a decision to exclude can be fairly taken, it is essential to establish the facts. If exclusion is being considered, then statements should be taken from all pupils and staff who were involved in or witnessed the incident. All written statements should be attributed, signed and dated by the witness who should first be given the opportunity to read it. The statement should also be countersigned by the person who took the statement and the person who was present when the pupil signed it. The original statement should be kept on file. The information gatherer should not be the same person as the decision taker.

It is good practice for another adult to be present when pupils are being interviewed by the person charged with the investigation. However, this need not be a parent. A neutral adult such as the school secretary or another member of staff is preferable.

- When should the parents be informed?

This will always depend on the facts of the particular case. As a general rule, however, it will normally make sense for the parents to be informed after initial investigations have been made but sufficiently in advance of any hearing to allow them time to prepare for that hearing. Clearly, where a pupil has been suspended pending the outcome of a disciplinary process then it will be necessary to inform the parents immediately of this. Similarly, in cases where Social Services or the Police become involved, it will generally be prudent to inform parents as soon as possible, after seeking guidance from the local Safeguarding Team.

- Should suspects be kept apart?

Yes, to the extent that this is reasonably possible. The pupil should be told not to discuss the matter with other pupils and, in particular, with the other pupils involved. This is particularly important where the accusation relates to issues such as bullying and physical or verbal abuse.

- When is suspension or a fixed exclusion appropriate?

In particularly serious cases it may be appropriate for the pupil to be suspended. Be realistic in assessing how long the suspension needs to be. Any suspension should be as brief as possible. If a relatively lengthy suspension is unavoidable, consider making suitable arrangements to ensure that, so far as practicable, the child is able to continue with their education during this time. This could be work sent home and marked or through Microsoft Teams. Parents should be told immediately of any decision to suspend and this should be followed within one school day by a confirmatory letter. In some instances, an internal suspension is more appropriate, particularly if the child is a full boarder. An internal suspension requires the child to be isolated from peers and lessons for a fixed period of time. The child will be supervised by a member of staff and work will be provided.

The Hearing

Once the information gathering stage has been completed, the next step is to hold the hearing itself. The hearing will generally be heard by the Head and attended by the pupil, parents, a note-taker and any other person required (e.g. witnesses or the member of staff who carried out the investigation). A checklist for conducting the hearing is set out below.

BEFORE THE HEARING	COMMENTS
Notify the pupil and parents of the hearing	Make sure the letter sets out precisely what allegations have been made. It should also contain all relevant practical details (e.g. the time, date, place and purpose of the hearing and who will be attending).
Circulate the evidence to be relied upon by the school	Provide copies of all evidence to be relied on by the school (including witness statements) and ask for any written submissions from the pupil/parents (including witness statements) to be provided for circulation by a specified (reasonable) date. Make sure all parties have sufficient time to prepare for the hearing.
Circulate any further evidence produced by the pupil/parents	Ideally, all parties should have copies of all evidence to be relied on five working days before the actual hearing. If this is not possible then consider whether a brief postponement is preferable.

AT THE HEARING...	COMMENTS
Explain the purpose of the hearing	The head should set out how the hearing will be conducted and the role of all those present.
The school presents its case	Generally, this will be done by the person who conducted the investigation. If witness statements have been obtained then these should be read out loud.
Allow the pupil/parents to ask questions	From a legal perspective, the pupil and parents are entitled to know the precise nature of the alleged facts. From a practical perspective, allowing sufficient questioning will reinforce the impression of fairness.
The pupil/parents present their case	The parents will normally undertake this role, but the pupil should be allowed to comment if appropriate.

The Head asks questions of the pupil/parents	The objective is for the Head to establish all the relevant facts to allow a fair decision to be reached.
Minute the hearing	A designated note-taker should note the names and roles of all people present, all written documents considered, all oral evidence given, and the decision reached, including the reasons stated.
Adjourn	In all but the most straightforward of cases, however, it is good practice to adjourn the hearing before announcing the decision. Failure to do so creates the impression that the outcome was pre- determined. Before adjourning, explain what will happen next and when.

FOLLOWING THE HEARING...	COMMENTS
Inform all parties of the decision	This can be done face to face in the first instance but should always be confirmed in writing, preferably within one school day of the hearing. The letter should state the decision in relation to the charge (or each of them), the sanction, when it takes effect, the reasons, to whom the parents may appeal and the deadline within which they must do so.

Prior to the hearing, other considerations are:

- Should the pupil be present at the hearing?
 As a general rule, yes. Natural justice requires that a pupil is able to hear the case against them and defend themselves. Unless there are strong reasons to the contrary, the pupil should be present and allowed to speak on his/her own behalf if he/she wishes to do so and the parents agree.
- Should any other witnesses be present at the hearing?
 Particularly where the other witnesses are also pupils it is generally preferable to rely on written statements at the hearing. Sometimes it may be felt that a witness should be present, for example to allow necessary questioning on the content of their statement. If so, the pupil may be asked to appear but should not be compelled to do so and the parents of that pupil must first consent.
- Can parents bring legal representatives to the hearing?
 This should normally be avoided unless there are compelling reasons for allowing it (e.g. illness, English not parents' first language). You may, however, wish to consider allowing parents to bring a non- legally qualified supporter, making it clear in advance that this person is not able to make representations. If this offer is made then parents should also be asked to name any such supporter in advance of the hearing.
- Should the hearing be recorded?
 This is generally unwise. The time taken to produce transcripts, and subsequent arguments over their accuracy, can cause significant and unhelpful delays. A full set of minutes of the meeting should still be taken and retained on file.

The Sanction

Once the hearing has been held the decision-taker (almost certainly the Head) will have a range of sanctions open to them. The fairness of the sanction selected is another area open to legal challenge. Before concluding that exclusion is justified, ask yourself the following questions:

1. Has the burden of proof been discharged?

The burden of proof required for all misdemeanours is that on the balance of probabilities (i.e. it is more probable than not) the pupil did what was alleged. Guidance on exclusion from schools and pupil referral units states that the more serious the allegations, the more convincing the evidence substantiating the allegation needs to be.

2. Is an exclusion fair in all the circumstances?

The decision to exclude is a very serious one with significant potential repercussions. In general, the decision should only be taken in response to a serious breach of the school's behaviour policy, once other options have been exhausted and if allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school. Once guilt has been established, ask yourself the following:

- Does the offence fall within the school's list of offences which may lead to exclusion? Any such list should state that it is non-exhaustive but an exclusion will be harder to challenge if the offence is contained in a published policy.
- Have pupils been excluded for similar offences in the past? As a general rule it is dangerous to exclude a pupil where previous offenders have been let off with, for example, a suspension.
- Has this pupil committed a serious disciplinary offence in the past? Excluding for a first breach of discipline is far more susceptible to challenge than where a pupil has a proven track record of misbehaviour.
- Have you taken into account any relevant domestic circumstances and whether the pupil was provoked, perhaps as a result of bullying or harassment?
- Are any other pupils involved in the investigation being dealt with in the same way? Again, it is dangerous to scapegoat one pupil in circumstances where others are to be treated more leniently. Check for consistency.
- Are the interests of the pupil outweighed by those of the school community? Consideration should be given to how much harm will it do to the school and those in it if this pupil is allowed to remain?

If the answer to any internal exclusion or of these questions is "no", consider whether a less draconian sanction is more appropriate. Suspension (perhaps accompanied by a final warning) are the logical and less severe alternatives. If the Head feels able to then they could consider agreeing to a managed move of the pupil to another school, provided such an alternative can be readily identified. Another option may be to allow the parents an opportunity to withdraw the pupil rather than having an exclusion imposed. Both these options should be used with care and are generally to be avoided where there is no confidence in the quality of the relationship between the school and parents going forward.

THE APPEAL

Fundamental to the fairness of any exclusion process is the right to appeal. An appeal should usually be heard by at least two of the governors and one person who is independent of the running of the School. A key point is that the appeal is not heard by the original decision taker and to this end, no governor who has been directly involved in the matter at hand should hear the appeal. The risk of lost schooling is a key concern that makes time of the essence. The objective must therefore be to hold any appeal within five working days. The appeal panel should not receive or consider fresh evidence that relates to issues not considered when the decision to exclude was taken. Equally, it should not overturn a decision to exclude purely on the basis of there having been a technical defect in the procedure followed - unless that defect was so substantial that justice was not done. It should be made clear from the outset that the appeal decision is final.

Procedure

The procedure for an appeal hearing is broadly the same as for the original hearing. The principal differences are that the appeal will generally be heard by the panel and the head will generally present the case for the school, taking everyone through the charges and supporting evidence then submitting why in his view the decision to exclude was justified. The parents then present the "case for the defence" (i.e. why their child is not guilty and/or why the sanction is disproportionate). The same principles as before; such as advance notification, the opportunity for questioning, preparation of minutes and so on should be followed.

New evidence

Both the school and the parents are free to introduce any relevant new evidence that has subsequently come to light and that relates to the issues considered when the original decision was taken. As with the first hearing, however, it is important to ensure that any such evidence is distributed to the relevant parties in advance of the appeal and in sufficient time to allow everyone to prepare.

Appeal or Re-hearing

Inevitably there are some occasions where, often unintentionally, the investigatory process or first hearing was so flawed that it is difficult, if not impossible, for these flaws to be corrected by an appeal. In that situation, careful thought should be given to offering an appeal by way of re-hearing instead.

THE AFTERMATH

The consequences of a decision to exclude can be far-reaching, both in terms of the immediate issue of placing the pupil in another school but also in light of the perceived blemish to a pupil's good character. The potential for emotional and psychological side-effects should obviously be borne in mind and can be mitigated not only by the human way in which the process is managed, but also by the school's care for the pupil both during and after the process.

References

As in the employment context there is no absolute obligation on schools to provide references for their pupils and, where an exclusion is involved, even greater care is required. In giving references schools will owe legal duties both to the pupil and also the recipient. Any reference must therefore be fair, accurate and not misleading.

Fees

The starting point is once again the school-parent contract. Check the provisions to establish what the school is entitled to retain or recover. If so, decide whether you actually wish to enforce that provision. It is not uncommon for a threat of legal action for an unfair exclusion to be motivated by a desire to escape liability for fees, and a without prejudice offer to waive amounts owed can make all the difference between a protracted legal dispute and a relatively swift and amicable resolution.