

The Federation of St Martin's & Seabrook CEP Schools
Pupil Suspension & Permanent Exclusion Policy

Reviewed: September 2024

Pupil Suspension & Permanent Exclusion Policy

Reference documents and further information

This policy has been produced with reference to the following documents:

- Federation of St Martin's & Seabrook CEP School Behaviour Policy
- Department for Education (DfE) Suspension and Permanent Exclusion from maintained schools, academies and pupil referral units in England May 2023 for implementation from September 2023
- Keeping Children Safe in Education
- DfE Governance Handbook
- Duties under the Education and Inspections Act 2006
- Duties under the Equality Act 2010 and the Children and Families Act 2014
- School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012

Introduction

The Federation of St Martin's & Seabrook CEP Schools aims to create high standards of behaviour in its schools so that children are protected from disruption and are in a calm, safe, and supportive environment that brings out the best in every pupil.

The behaviour policy details the Federation's approach to behaviour management and, in severe cases and as a last resort, includes the use of suspensions (that is, exclusions of a fixed term) and permanent exclusions.

In taking their decisions, the Executive Headteacher and the Governing Board will comply with their statutory duties under the Education and Inspections Act 2006 with a view to ensuring acceptable standards of behaviour and conduct of pupils and the Equality Act 2010 and Children and Families Act 2014 regarding the elimination of discrimination, harassment, victimisation and other prohibited conduct and ensuring the equality of opportunity of all children with protected characteristics. There will be no discrimination against a pupil based on sex, race, disability, religion or belief, sexual orientation, gender reassignment.

The DfE supports headteachers in using suspension and permanent exclusion as a sanction when warranted as part of creating calm, safe, and supportive environments where both pupils and staff can work in safety and are respected. To achieve this, suspension and permanent exclusion are sometimes a necessary part of a functioning system, where it is accepted that not all pupil behaviour can be amended or remedied by pastoral processes, or consequences within the school.

Categories of pupils for whom governors have a statutory responsibility

As determined in the School Discipline (Pupil Exclusions & Review) Regulation 2012, governors have a statutory responsibility, as detailed in this policy, for any pupil who is:

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- (a) Permanently excluded.
- (b) Suspended for more than 15 days in any term.
- (c) As a result of suspension will lose the opportunity to take a National Curriculum test.
- (d) As a result of the suspension excluded for a total of more than 5 days in any term **and** a relevant person, (usually the parent), has made representation.

The Executive Headteacher's power to suspend or permanently exclude

Only the Executive Headteacher can suspend or permanently exclude a pupil on disciplinary grounds.

A pupil 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's behaviour outside school can be considered grounds for a suspension or permanent exclusion.

Any decision of the Executive Headteacher, 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 the Federation's wider legal duties); reasonable; fair; and proportionate.

When establishing the facts in relation to a suspension or permanent exclusion decision the Executive Headteacher 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 Executive Headteacher will accept that something happened if it is more likely that it happened than that it did not happen. The Executive Headteacher must take account of their legal duty of care when sending a pupil home following an exclusion.

The Executive Headteacher will also take the pupil'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. The Executive Headteacher will 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.

(a) Suspension

A suspension, where a pupil is temporarily removed from the school, is an essential behaviour management tool and is set out within the Federation's behaviour policy.

A pupil 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 is used to provide a clear signal of what is unacceptable behaviour as part of the Federation's behaviour policy and shows a pupil that their current behaviour is putting them at risk of permanent exclusion.

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During a suspension, pupils still receive their education. The Executive Headteacher will take steps to ensure that work is set and marked for pupils during the first five school days of a suspension and may utilise online pathways.

The Federation's legal duties to pupils with disabilities or SEN remain in force, for example, to make reasonable adjustments in how it supports disabled pupils during this period.

A suspension can also be for parts of the school day. For example, if a pupil's behaviour at lunchtime is disruptive, they may be suspended from the school premises for the duration of the lunchtime period.

A 'fixed period' means that a suspension on disciplinary grounds cannot be open ended but must have a defined end date that is fixed at the time when the suspension is first imposed.

The Executive Headteacher will notify parents, as soon as possible.

(b) Permanent exclusion

A permanent exclusion is when a pupil is no longer allowed to attend 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 Federation'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, the Executive Headteacher will 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's social worker and Virtual School Head (VSH)) will be undertaken.

(c) Process for exclusions

The Executive Headteacher will ensure that:

- Recording of suspensions and exclusions take place so that the maximum 45 days permitted in a school year (including suspensions received in other schools) is not exceeded.
- Parents, social workers (if appropriate), Governing Board and local authority are informed.
- There are up to date links to sources of impartial advice for parents.
- Reintegration of pupils whose suspensions have ended or been cancelled and pupils whose permanent exclusions have been cancelled is provided and support given regarding future behaviour.

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- There is a process for arranging, at short notice, suitable full-time alternative education for pupils receiving suspensions over five school days.

(d) Cancelling exclusions

The Executive Headteacher can cancel any exclusion that has already begun (or one that has not yet begun), but this can only happen when the Governing Board has not yet met to consider whether the pupil should be reinstated.

The pupil must be allowed back into school without delay.

Any days spent out of school as a result of any exclusion, prior to the cancellation will count towards the maximum of 45 school days permitted in any school year.

A permanent exclusion cannot be cancelled if the pupil has already been excluded for more than 45 school days in a school year or if they will have been so by the time the cancellation takes effect.

(e) Reasons and recording exclusions

The Executive Headteacher will use professional judgement based on the individual circumstances of the case when considering whether to exclude a pupil.

The reasons below are examples of the types of circumstances that may warrant a suspension or permanent exclusion (this is not an exhaustive list):

- 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 the Federation's behaviour policy.
- Bullying.
- Racist abuse.
- Abuse against sexual orientation or gender reassignment.
- Abuse relating to disability.

The Department for Education collects data on suspensions and permanent exclusions from all state-funded schools via the termly school census. The Federation will provide information via the school census on pupils subject to any type of suspension or permanent exclusion in the previous two terms.

(f) Safeguarding

When making decisions regarding suspension and exclusion, the Executive Headteacher and Governing Board will take into account their duty to safeguard and support children and their duty to provide an education.

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The Federation has a statutory duty to make arrangements for safeguarding and to promote the welfare of its pupils. As part of this duty, the Federation will follow the general safeguarding principles detailed in the document Keeping Children Safe in Education.

(g) Reintegration after a suspension

The Federation is committed to supporting pupils to reintegrate successfully into school life and full-time education following a suspension (this may also be after a cancelled exclusion).

The Executive Headteacher will provide a reintegration strategy that offers the pupil a fresh start; helps them understand the effect of their behaviour on themselves and others; teaches them how to 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 will be clearly communicated at a reintegration meeting before or at the beginning of the pupil's return to school.

During a reintegration meeting, the Executive Headteacher will 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.

To ensure ongoing progress, the strategy will be regularly reviewed and adapted where necessary throughout the reintegration process in collaboration with the pupil, parents, and other relevant parties.

A part-time timetable will 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 will have a time limit by which point the pupil is expected to attend full-time education.

There will also be formal arrangements in place for regularly reviewing a part-time timetable with the pupil and their parents. In agreeing to a part-time timetable, the Federation has agreed to a pupil being absent from school for part of the week or day and will treat absence as authorised.

Factors to consider before making a decision to exclude

The use of alternative provision (AP) can be important in managing behaviour and providing alternatives to exclusion. This could include outreach support for pupils in school and offering short term places to pupils who need a time-limited intervention away from school.

(a) Off-site direction

The Governing Board may require a pupil to attend another education setting to improve their behaviour. This is referred to as 'off-site direction'. During off-site direction the pupil is dual registered. A maximum period of time will be discussed and agreed as part of the planning phase for an off-site direction. As part of the planning, alternative options will be

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considered once the time limit has been reached, including a managed move on a permanent basis.

The Governing Board must ensure that parents, and where the pupil has an EHC (Education, Health & Care) plan, the Local Authority are notified in writing and provided with information about the placement as soon as practicable after direction has been made and no later than two school days before the relevant day.

Parents, and where the pupil has an EHC plan, the Local Authority can request, in writing, that the Governing Board hold a review meeting, as soon as reasonably practicable, unless there has been a review meeting in the previous 10 weeks.

The Governing Board will keep the placement under review holding review meetings at such intervals as is felt appropriate to the needs of the pupil. Not later than six days before the date of any review meeting, the Governing Board will give a written invitation to the parents and where the pupil has an EHC plan, the Local Authority, 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 Board will 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 reasons for it to the parents no later than six days after the date of the review meeting.

(b) Managed move

A managed move is used to initiate a process which leads to the transfer of a pupil 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.

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.

The managed move should be preceded by information sharing between the Federation and the new school, including data on prior and current attainment, academic potential, a risk assessment and advice on effective risk management strategies. The new school should 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 Federation's complaints procedure with the Governing Board and, where appropriate, the Local Authority.

The Executive Headteacher will ensure that all relevant external agencies, such as social workers and VSH, are involved in the discussions.

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The Executive Headteacher's duty to inform parties about an exclusion

(a) Informing parents

To ensure that a child receives the correct support and protection during a suspension or permanent exclusion, whenever the Executive Headteacher suspends or permanently excludes a pupil the Executive Headteacher will, without delay, notify parents of the period of the suspension or permanent exclusion and the reason(s) for it.

The Executive Headteacher must also, without delay, after the 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;
- the parents' right to make representations about the suspension or permanent exclusion to the Governing Board;
- the parents' right to make a request to hold the meeting via the use of remote access and how and to whom to make this request (see Annex A);
- 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 have a right to attend a meeting, to be represented at that meeting (at their own expense) and to bring a friend.

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.

The Executive Headteacher will 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 Executive Headteacher will 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.

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;
- any information required by the pupil to identify the person they should report to on the first day.

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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.

(b) Informing relevant agencies

Information sharing is vital in safeguarding children and promoting their welfare, including their educational outcomes. The Executive Headteacher will share information as early as possible to help identify, assess, and respond to risks or concerns about the safety and welfare of children. If a pupil is suspended or permanently excluded, the Executive Headteacher will, without delay, after the decision, also notify the social worker, if a pupil has one and the Virtual School Head (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 Local Authority must be informed without delay of all school exclusions regardless of the length of the exclusion.

(c) Informing the Governing Board

The Executive Headteacher will, 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;
- any suspension or permanent exclusion which would result in the pupil missing a national curriculum test.

The Executive Headteacher will also inform the Governing Board once per term of any other suspensions of which they have not previously been notified.

The Governing Board and Local Authority's duties to arrange education for excluded pupils

The Governing Board and the Local Authority 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.

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(a) 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 the pupil.

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.

The Federation will 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.

(b) The education of pupils prior to the sixth day of an exclusion

The Federation will seek to minimise the disruption that suspension or permanent exclusion can cause to a pupil's education.

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 Federation will take reasonable steps to set and mark work for the pupil. Online pathways such as Google Classroom or Oak Academy may be used provided that the work set is accessible and achievable by the pupil outside school.

The Governing Board's duty to consider an exclusion

The Governing Board has a key responsibility in considering whether excluded pupils should be reinstated. This forms part of its wider role to hold the Executive Headteacher to account for the lawful use of exclusion, in line with the duties set out in law, including equalities duties.

The Governing Board has a duty to consider parents' representations about a suspension or permanent exclusion.

The requirements on the Governing Board to consider the reinstatement of a suspended or permanently excluded pupil depend upon a number of factors See below 'A summary of the Governing Board's duties to review the Executive Headteacher's exclusion decision'.

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The Governing Board may delegate its functions with respect to the consideration of a suspension or permanent exclusion to a designated sub-committee consisting of at least three governors.

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 Executive 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;
- it would result in the pupil missing a national curriculum test.

The requirements are different for suspensions where a pupil would be excluded for more than five but not more than 15 school days in a term.

Where a suspension or permanent exclusion would result in a pupil missing a national curriculum test, there is a further requirement for the Governing Board.

It must, so far as is reasonably practicable, consider and decide on the suspension or permanent exclusion before the date of the test. If it is not practical for sufficient governors to consider the reinstatement before the test, the Chair of Governors may consider the suspension or permanent exclusion alone and decide whether or not to reinstate the pupil.

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 Executive Headteacher;
- a representative of the Local Authority;
- the child's social worker if the pupil has one; and
- the VSH if the child is a 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. 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.

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(a) A summary of the Governing Board's duties to consider reinstatement

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 / exclusions, 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. This includes suspensions that exceed 15 school days by less than a whole day, e.g. one that totals 15.5 days.
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 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 test. 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. Has the parent made representations?

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.
If the answer is **no**, the Governing Board is not required to consider the suspension and does not have the power to decide to reinstate the pupil.

(b) Reviewing the data on suspensions and permanent exclusions

On reviewing the data on suspensions and permanent exclusions, the Governing Board will consider:

- effectiveness and consistency in implementing the Federation'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;

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- 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 alternative provision are reviewed at sufficient intervals to assure that the education is achieving its objectives and that pupils are benefiting from it.

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 it will:

- 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 statements 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 years old 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 its 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 effect 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.

There is no automatic right for a suspended or permanently excluded pupil to take a national curriculum test on the school's premises. The Governing Board will 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 test or whether this could be facilitated in another way.

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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, it will 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 will also consider any representations made by or on behalf of:

- the parents;
- the Executive Headteacher;
- the pupil's social worker if the pupil has one;
- if the pupil is looked-after, the VSH;
- and the Local Authority.

Taking into account, the pupil's age and understanding, the pupil and 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 will 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 will 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 (IRP). (Details of an IRP are given below).

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

The Governing Board will agree the steps it will take to ensure all parties will be supported to participate in its consideration and have their views heard.

The Governing Board will 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, which a clerk should be present for.

The Governing Board will ask all parties to withdraw from the meeting before making a decision. Where present, a clerk should 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 Executive Headteacher'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. The Federation will 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 will notify parents, the Executive Headteacher, 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 will 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, that is, 15 school days from the date on which notice in writing of the Governing Board's decision is given to parents;

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- where and to whom an application for a review (and any written evidence) should be submitted;
- that a request to hold the meeting via the use of remote access can be made and knows how and to whom to make this request to (further information can be found in Annex A: Key principles when conducting meetings via the use of remote access);
- 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 to appoint a SEN expert to advise the review panel;
- details of the role of the SEN expert;
and
- that parents may, at their own expense, appoint someone to make written and/or oral representations to the panel.

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 this information 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 will set out the reasons for its decision in sufficient detail to enable all parties to understand why the decision was made.

Where relevant, the Governing Board, following consultation with the local Authority, will 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. The notice will also refer to the statutory guidance provided to SEN experts and 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

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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.

Role of SEN Expert as part of the IRP

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 Federation'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 Federation does not recognise a pupil as having SEN, the SEN expert should advise the panel on whether they believe the Federation 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 the Federation'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.

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.

The Independent Review Panel (IRP)

It is the duty of the Local Authority to arrange an IRP.

IRPs contribute to a robust process of scrutiny to ensure that exclusions are lawful, reasonable, and procedurally fair and what further action might need to be taken.

If applied for by parents within the legal time frame, the Local Authority must, at their own expense, arrange for an IRP hearing to review the decision of the Governing Board not to reinstate a permanently excluded pupil.

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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
- 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.

Note: The First-tier Tribunal (Special Educational Needs and Disability) and County Court have the jurisdiction to hear claims of discrimination under the Equality Act 2010 which relate to exclusions.

Any application made outside of the legal time frame must be rejected by the Local Authority.

The Local Authority 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.

The Local Authority will constitute the panel with either three or five members (as decided by the Local Authority) representing each of the following three categories:

- 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.

In addition, the Local Authority will appoint the following:

- A clerk
- A SEN expert, if requested by parents with their application for an independent review. The Local Authority will cover the associated costs of this appointment.

Where relevant, the Local Authority will include the pupil's social worker and/or VSH. The parent will be invited to attend.

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.

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'.

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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; Executive Headteacher; and Local Authority.

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 the 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.

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 will 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.

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 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 will reconsider 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. There may also be an adjustment made to the school budget, if the IRP has ordered this.

In the case of either a recommended or directed reconsideration, the Governing Board will notify the following people of their reconsidered decision, and the reasons for it, in writing and without delay:

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- the parent;
- the Executive Headteacher;
- the Local Authority.

The Governing Board will base its reconsideration on the presumption that a pupil will return to the school if reinstated, regardless of any stated intentions by the parents. If the decision of the Governing Board to offer reinstatement is subsequently turned down by the parents this will be recorded on the pupil's educational record. The Governing Board's decision will demonstrate how it has addressed the concerns raised by the IRP.

Statutory guidance to the Executive Headteacher and Governing Board and 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.

The Executive 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 Executive Headteacher will need to take a decision on the evidence available at the time.

In all cases, the Federation will follow general safeguarding principles as found in Keeping Children Safe in Education.

Where the evidence is limited by a police investigation or criminal proceedings, the Executive Headteacher will consider any additional steps that may be needed to ensure that the decision to suspend or permanently exclude is fair. The final decision on whether to suspend or permanently exclude is for the Executive Headteacher to make.

278. 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.

Annex A: Key principles when conducting meetings via the use of remote access

The Executive Headteacher and Governing Boards may advise the parent within their written notification, to consider the following, before requesting a remote access meeting:

- the technology that will be used for the Governing Board.
- Does the parent have an appropriate space free from other distractions to enable them to participate fully with a remote access meeting.
- Where the parent has limited access to the Internet, intermittent service or slower speed internet, the parent should not request a remote meeting for a Governing Board.

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- Where the parent initially asks for a meeting to be held via the use of remote access then decide to withdraw the request, they should inform the Governing Board without delay. The Governing Board should without delay, arrange the meeting to be held face to face.

(a) Running the meeting via the use of remote access

To ensure the meeting is capable of being held fairly and transparently, the Governing Board should make every effort to check all participants understand the proceedings and be made aware of how to raise any issues that may prevent their effective engagement. If these conditions are not met, the meeting should not be held via remote access and must be arranged face to face without delay.

To help meetings run smoothly and ensure they are accessible to any participants, the Governing Board will:

- provide clear instructions about how to join the meeting virtually, and distribute the joining instructions in a timely manner ahead of the meeting
- indicate a named person who parents, or any participant should contact, if they have any questions before the meeting takes place
- consider holding a 'test meeting' with any participant to check the available technology is suitable, and that all participants understand how to access the meeting
- ensure that the Chair of Governors is prepared to explain the agenda at the start and 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 parents can access advocacy services during the meeting

(b) Things to remember

The use of remote access does not alter other procedural requirements that apply to the Governing Boards.

For example, parents may be joined by a friend as normal.

The Governing Board must consider written representations if they are made. The law does not allow for solely paper based 'meetings', conducted in writing.

For the purposes of which information is recorded within minutes, the normal rules apply as per this guidance, and the Governing Board can instruct the clerk to record any information or instructions that they deem sensible to include so that the minutes provide a clear and sufficient record of all relevant parts of the meeting, for example, how chat functions or messages will be monitored.