



# Exclusions Policy

## March 2023

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## 1. Aims

Our school aims to ensure that:

- The suspension and exclusions process is applied fairly and consistently
- The suspension and exclusions process is understood by governors, staff, parents and pupils
- Pupils in school are safe and happy

## 2. Legislation and statutory guidance

This policy is based on statutory guidance from the Department for Education: [Exclusion from maintained schools, academies and pupil referral units \(PRUs\) in England including pupil movement guidance 2022](#).

It is based on the following legislation, which outline schools' powers to exclude pupils:

Section 52 of the [Education Act 2002](#), as amended by the [Education Act 2011](#) [The School Discipline \(Pupil Exclusions and Reviews\) \(England\)](#)

[Regulations 2012](#) In addition, the policy is based on:

Part 7, chapter 2 of the [Education and Inspections Act 2006](#), which looks at parental responsibility for excluded pupils

Section 579 of the [Education Act 1996](#), which defines 'school day'

The [Education \(Provision of Full-Time Education for Excluded Pupils\) \(England\) Regulations 2007](#), as amended by [The Education \(Provision of Full-Time Education for Excluded Pupils\) \(England\) \(Amendment\) Regulations 2014](#)

This policy complies with our funding agreement and articles of association.

## 3. The decision to exclude

Only the headteacher, or acting headteacher, can suspend or permanently exclude a pupil from school. A permanent exclusion will be taken as a last resort. A pupil may be suspended for one or more fixed periods (up to a maximum of 45 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 a headteacher, including suspension or permanent exclusion, will 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 a school's wider legal duties); reasonable; fair; and

proportionate.

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

Headteachers will also take the pupil’s views into account, considering these considering their age and understanding, before deciding to exclude, unless it would not be appropriate to do so. Headteachers will inform the pupil about how their views have been factored into any decision made. Where relevant, the pupil will be given support to express their view, including through advocates such as parents or, if the pupil has one, a social worker. Whilst an exclusion may still be an appropriate sanction, the headteacher will also take account of any contributing factors identified after an incident of misbehaviour has occurred and consider paragraph 45 of the Behaviour in Schools guidance along with the school Behaviour Policy.

## 4. Definitions

A suspension, where a pupil is temporarily removed from the school, is an essential behaviour management tool.

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 may be used to provide a clear signal of what is unacceptable behaviour as part of the school’s behaviour policy and show a pupil that their current behaviour is putting them at risk of permanent exclusion. Where suspensions are becoming a regular occurrence for a pupil, the headteacher and senior team will consider whether suspension alone is an effective sanction for the pupil and whether additional strategies need to be put in place to address behaviour.

It is important that during a suspension, pupils still receive their education. Headteachers will take steps to ensure that work is set and marked for pupils during the first five school days of a suspension. This can include utilising any online pathways such as Google Classroom or Oak National Academy.

The school’s legal duties to pupils with disabilities or special educational needs remain in force, for example, to make reasonable adjustments in how they support disabled pupils during this period. Any time a pupil is sent home due to disciplinary reasons and asked to log on or utilise online pathways should always be recorded as a suspension.

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. The legal requirements relating to the suspension, such as the headteacher's duty to notify parents, apply in all cases. Lunchtime suspensions are counted as half a school day in determining whether a Governing Body meeting is triggered.

The law does not allow for extending a suspension or 'converting' a suspension into a permanent exclusion. In exceptional cases, usually where further evidence has come Paragraphs 6, 9 and 10 give guidance about section 51A Education Act 2002. 14 A 'fixed period' means that a suspension on disciplinary grounds can't be open-ended but must have a defined end date that is fixed at the time when the suspension is first imposed a further suspension may be issued to begin immediately after the first period ends; or a permanent exclusion may be issued to begin immediately after the end of the suspension.

For the purposes of suspensions, a school day is defined as any day on which there is a school session. Therefore, INSET or staff training days do not count as a school day.

## Permanent Exclusion

A permanent exclusion is when a pupil is no longer allowed to attend a 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 school'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, headteachers 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) should also be considered..

## Cancelling exclusions

The headteacher may cancel any exclusion that has already begun, but this should only be done where it has not yet been reviewed by the Governing Body. Where an exclusion is cancelled, then:

- Parents, the Local Governing Body, and the LA should be notified without delay and, if relevant, the social worker and Virtual School Head (VSH);
- Parents will be offered the opportunity to meet with the headteacher to discuss the circumstances that led to the exclusion being cancelled;

- Schools will report to the Local Governing Body once per term on the number of exclusions which have been cancelled. This should include the circumstances and reasons for the cancellation enabling Governing Bodies to have appropriate oversight;
- The pupil should be invited back into school.

## 5. Reasons and recording exclusions

The DfE are keen for headteachers to use their 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.

- 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 a school's behaviour policy
- Bullying
- Racist abuse
- Abuse against sexual orientation or gender reassignment
- Abuse relating to disability

This list is non-exhaustive and is intended to offer examples rather than be complete or definitive.

## 6. Off-rolling and unlawful exclusions

Telling or forcing a pupil to leave school, or not allowing them to attend school, is a suspension (if temporary) or permanent exclusion (if permanent). Whenever a pupil is made to leave school, or forbidden from attending school, on disciplinary grounds, this must be done in accordance with the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 and with regard to relevant parts of this guidance.

Suspending a pupil for a short period of time, such as half a day, is permissible, however, the formal suspension process must be followed. Each disciplinary suspension and permanent exclusion will be confirmed to the parents in writing

with notice of the reasons for the suspension or permanent exclusion.

Any exclusion of a pupil, even for short periods, will be formally recorded. It would be unlawful to exclude a pupil simply because they have SEN or a disability that the school feels it is unable to meet, or for a reason such as: academic attainment/ability; or the failure of a pupil to meet specific conditions before they are reinstated, such as to attend a reintegration meeting.

If any unlawful exclusions are carried out and lead to the deletion of a pupil's name from the register, this is known as 'off-rolling'. An informal or unofficial exclusion, such as sending a pupil home 'to cool off', is unlawful when it does not follow the formal school exclusion process and regardless of whether it occurs with the agreement of parents.

A further example of off-rolling would be exercising undue influence over a parent to remove their child from the school under the threat of a permanent exclusion and encouraging them to choose Elective Home Education or to find another school place.

If a parent feels pressured into electively home educating their child or that the suspension or permanent exclusion procedures have not been followed, they can follow the school's complaints procedure.

## **7. Safeguarding, including guidance concerning child-on-child abuse**

If there is an ongoing safeguarding investigation (whether that includes a criminal investigation or not) that may result in the permanent exclusion of a pupil or if a pupil has been reinstated following a Governing Body review, it is likely that there will be complex and difficult decisions that need to be made. The headteacher will ensure that these decisions are made alongside a school's duty to safeguard and support children and their duty to provide an education.

Schools have a statutory duty to make arrangements for safeguarding and promoting the welfare of their pupils. As part of this duty, schools are required to have regard to guidance issued by the Secretary of State. Kernow Learning schools will refer to Keeping Children Safe in Education. Furthermore, schools have a statutory duty to co-operate with safeguarding partners once designated as relevant agencies. Equally, safeguarding partners are expected to name schools as relevant agencies and engage with them in a meaningful way. Ultimately, any decisions are for the school to make on a case-by-case basis, with the designated safeguarding lead (or a deputy)

taking a leading role and using their professional judgement, supported by other agencies, such as children's social care and the police as required.

A safeguarding investigation may run parallel to any considerations to suspend or exclude a pupil involved in the incident. The school will focus on their duties to:

- a. Safeguard and promote the welfare of all pupils
- b. Provide a suitable education

Decisions in cases like these ultimately sit with the Headteacher but the DSL should take a leading role and lend their professional judgement, supported by other agencies as required

### **In cases where a child is permanently excluded**

The DSL of the excluding school will transfer the pupil's Safeguarding file to the new school:

- c. Within 5 days for an in-year transfer, or
- d. Within the first 5 days of a new term

This child-protection file will be transferred separately from the main pupil file, securely and with confirmation of receipt.

When a Kernow Learning school is receiving an excluded pupil, the DSL will be made aware of the file (along with any other relevant staff).

## **8. Reintegration after a suspension or off-site direction**

Kernow Learning schools will support pupils to reintegrate successfully into school life and full-time education following a suspension or period of off-site direction. Headteachers will design a reintegration strategy that offers the pupil a fresh start; helps them understand the impact 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 school will communicate to the pupil that they are valued, and their previous behaviour should not be seen as an obstacle to future success. This meeting should include the pupil's parents. However, it is important to note that a pupil should not be prevented from returning to a mainstream classroom if parents are unable or unwilling to attend a reintegration meeting. 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.

Where necessary, the school will work with relevant staff and multi-agency organisations, such as teachers, pastoral staff, mentors, social workers, educational psychologists or the safer schools team, to identify if the pupil has any SEND and/or health needs.

A part-time timetable will not be used to manage a pupil's behaviour and will 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, either at school or alternative provision. There will also be formal arrangements in place for regularly reviewing it with the pupil and their parents. In agreeing to a part-time timetable, the school has agreed to a pupil being absent from school for part of the week or day and therefore will treat absence as authorised. If this measure is appropriate the school will inform the LA using the link below:

<https://old.cornwall.gov.uk/school-messenger-home/pupil-support/children-missing-out-on-education-reduced-timetables/>

The school will consider a range of measures to enable the pupil's successful reintegration which can include, but are not limited to:

- Maintaining regular contact during the suspension or off-site direction and welcoming the pupil back to school;
- Daily contact with a designated SENDCO or pastoral professional in-school;
- Use of personalised targets leading to personalised rewards;
- Ensuring the pupil follows an equivalent curriculum during their suspension or off-site direction or receives academic support upon return to catch up on any lost progress;
- Planned pastoral interventions;
- Regular reviews with the pupil and parents to praise progress being made and raise and address any concerns at an early stage;
- Informing the pupil, parents and staff of potential external support.

## 9. Roles and responsibilities

### 9.1 The headteacher

#### **The headteacher will inform Central Team**

Whenever a headteacher suspends or permanently excludes a pupil they will, without delay, notify the Trust Safeguarding Lead of the period of the suspension or permanent exclusion and the reason(s) for it.

### The headteacher will inform the parents

1. Whenever a headteacher suspends or permanently excludes a pupil they will, without delay, notify parents of the period of the suspension or permanent exclusion and the reason(s) for it. This will be in person or by telephone in the first instance to allow parents to ask any initial questions or raise concerns directly with the headteacher. The headteacher will consider the following prior to the meeting:

- The need to fully inform the parents (and when appropriate, the child's social worker) of the reasons for their decision and to ensure they can fully understand the type/scale of the incident?
- How to communicate accessibly and clearly, including whether parents may have communication needs relating to a disability or having English as an additional language (EAL).
- Ensure that the pupil's social worker or the local authority if a pupil has an EHCP have been contacted and informed.
- Whether the pupil will be able to sit any national curriculum test(s) or public examination(s) occurring during the suspension or permanent exclusion?

2. The headteacher will also, without delay, after their decision and the meeting with parents, provide parents with the following information in writing:

- The reason(s) for the suspension or exclusion
- The length of a fixed-term suspension or, for a permanent exclusion, the fact that it is permanent
- Information about parents' right to make representations about the suspension or permanent exclusion to the Local Governing Body and how the pupil may be involved in this .
- Where there is a legal requirement for the Local Governing Body to meet to consider the reinstatement of a pupil, and that parents have a right to attend a meeting, be represented at a meeting (at their own expense) and to bring a friend
- When notifying parents about a suspension or permanent exclusion, the headteacher will draw attention to relevant sources of free and impartial information. This information will include:
  - Details of the local SENDIAS service who provide information, advice and support to children and young people with SEND, including on exclusions.
  - Coram's Child Law Advice service which can be accessed through their website <https://childlawadvice.org.uk/information-pages/school->

[exclusion/](#) or contacted on 0300 330 5485 from Monday to Friday, 8am – 6pm.

- ACE education, who run a limited service and can be reached on 0300 0115 142 on Monday to Wednesday from 10am to 1pm during term time. Information can be found on the website: <http://www.ace-ed.org.uk/>.
- Independent Provider of Special Education Advice (known as IPSEA – [www.ipsea.org.uk](http://www.ipsea.org.uk)) is a registered charity. It offers free and independent information, advice and support to help get the right education for children and young people with all kinds of special educational needs (SEN) and disabilities.

3. The Headteacher will notify parents by the end of the afternoon session on the day their child is suspended, that for the first 5 school days of a suspension, or until the start date of any alternative provision where this is earlier, parents are legally required to ensure that their child is not present in a public place during school hours without a good reason. Parents may be given a fixed penalty notice or prosecuted if they fail to do this.

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

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

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

6. When notifying parents about a suspension or permanent exclusion, the headteacher will set out what arrangements have been made to enable the pupil to continue their education prior to the start of any alternative provision or the pupil's return to school, in line with legal requirements

## **The headteacher will inform the Local Governing Body and the Local Authority**

1. The headteacher will immediately notify the Local Governing Body, and via the central team, the Board of Trustees and the local authority (LA) of:

- Any permanent exclusion, including when a suspension is followed by a decision to permanently exclude a pupil
- Suspensions which would result in the pupil being excluded for more than 5 school days (or more than 10 lunchtimes) in a term
- Suspensions or permanent exclusions which would result in the pupil missing a public examination
- All cancelled suspensions and exclusions.

For all other suspensions and permanent exclusions, the headteacher will notify the Local Governing Body termly.

2. The headteacher will work with the chair of the Local Governing Body to ensure that they are aware of the processes in place for considering suspensions and permanent exclusions, such as:

- Ensuring parents and pupils are aware of their right to consideration by the Local Governing Body
- Asking whether the Local Governing Body have taken steps to find a convenient date that the parent, other relevant parties and the headteacher can attend, within the legal time limits
- Asking the Local Governing Body whether they have thought about how to involve the pupil in the consideration process
- Collecting all relevant documents, anonymising them, if required, and providing them to all parties.
- Discuss with the Local Governing Body their statutory duty to ensure that full-time education is arranged from the sixth day of a suspension or permanent exclusion, there is an obvious benefit to the pupil in starting this provision as soon as possible. In the case of a looked-after child or child with a social worker, the school and the local authority will work together to arrange alternative provision from the first day following the suspension or permanent exclusion.

3. The headteacher, working with the central team and Safeguarding Lead will ensure that a process is in place for the Local Governing Body when considering reinstatement of a pupil following an suspension or exclusion and work with the Chair to ask the following:

- Do governors understand the suspension and permanent exclusion process to enable a review within deadlines?

- Would governors benefit from additional training, including on behaviour management, routines, norms and consequences, disability awareness, the Equality Act 2010, the Children and Families Act 2014 and SEND provision?
- Is there a clear and timely system in place to enable parents to make representations?
- Templates for notifying parents of the decision and explaining the next steps are available from the central team.
- Are the Local Governing Body aware of their role in ensuring that children who have been suspended or excluded from school receive a suitable education that facilitates their successful reintegration into education or meets their long term needs?

### **The headteacher will inform the social worker/DSL and VSH**

If the pupil has a social worker or if the pupil is a looked after child the headteacher will notify the social worker and/or the VSH immediately following the decision to permanently exclude the pupil.

## **9.2 The Local Governing Body**

The Local Governing Body has a duty to consider parents' representations about a suspension or permanent exclusion. The requirements on a Local Governing Body to consider the reinstatement of a suspended or permanently excluded pupil depend upon a number of factors (these requirements are illustrated by the diagram - A summary of the Local Governing Body's is to review the headteacher's exclusion decision.

The Local Governing Body 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 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; or
- it would result in the pupil missing a public examination or national curriculum test.

The requirements are different for suspensions where a pupil would be suspended for more than five but less than 16 school days in a term. In this case, if the parents make representations, the Local Governing Body must consider and decide within 50 school days of receiving the notice of suspension whether the suspended pupil should be reinstated. In the absence of any representations from the parents, the Governing Body is not required to meet and cannot direct the reinstatement of the pupil.

For a suspension of more than 5 school days, the Headteacher in collaboration with the Local Governing Body and Local Authority will arrange suitable full-time education for the pupil.

This provision will begin no later than the sixth day of the exclusion.

Where a suspension or permanent exclusion would result in a pupil missing a public examination or national curriculum test, there is a further requirement for the Local Governing Body, it must, so far as is reasonably practicable, consider and decide on the suspension or permanent exclusion before the date of the examination or test.

### **Preparing for the consideration of a suspension or permanent exclusion**

Where the Governing Body is legally required to consider the reinstatement of a suspended or permanently excluded pupil they should:

- 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 is to be invited as a witness, the Governing Body 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 their 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 impact 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.

### **Meeting of the Local Governing Body**

The Local Governing Body will be made up of a minimum of:

- The Chair of the LGB
- The SEND Governor
- The Safeguarding Governor
- Also invited:
- The Trust Safeguarding Lead
- The Clerk

The following parties must be invited to a meeting of the Local Governing Body and allowed to make representations or share information:

- parents (and, where requested, a representative or friend);
  - the pupil if they are 18 years or over;
  - the headteacher;
  - the child's social worker if the pupil has one; and
  - the VSH if the child is LAC;
- ✎ Taking into account, the pupil's age and understanding, the pupil should be enabled to make a representation on their own behalf if they wish to do so.

The Local Governing Body will follow the suggested agenda (see appendix) and will ensure that clear minutes are taken of the meeting as a record of the evidence that was considered by the Local Governing Body. These minutes will be made available to all parties on request and the record of discussion will state clearly how the decisions have been reached.

### **The decision, and providing information to parents following its decision on reinstatement**

The Local Governing Body will ask all parties to withdraw from the meeting before making a decision.

The clerk may stay to help the Governing Body 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 Local Governing Body will consider whether the decision to suspend or permanently exclude the pupil was lawful, reasonable, and procedurally fair. This will consider the welfare and safeguarding of the pupil and their peers, the headteacher's legal duties, and any evidence that was presented to the Local Governing Body in relation to the decision to exclude.

It is good practice to notify the parents by telephone as soon as possible. The Local

Governing Body will follow this up in writing within 1 school day. The letter will clearly state the reasons for the committee's decision. It will also give details and timescales of the appeals process if appropriate. The Local Governing Body will set out the reasons for its decision in sufficient detail to enable all parties to understand why the decision was made and provide details of how and where the parent's may make an application for an Independent Review Panel to be convened and the time scales within which they must make their application.

Where the Local Governing Body declines to reinstate the pupil, it will draw the attention of parents to relevant sources of free and impartial information that will allow them to make an informed decision on whether and, if so, how to seek a review of the decision.

The Local Governing Body 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 Local Governing Body considers parents' representations but does not reinstate the pupil, it will consider whether it would be appropriate to place a note of its findings on the pupil's educational record.

## 10. The Independent Review Panel

It is the trust's duty to arrange an independent review panel IRPs which contributes to a robust process of scrutiny to ensure that exclusions are lawful, reasonable, and procedurally fair. If applied for by parents within the legal time frame, the Trust will, at their own expense, arrange for an IRP hearing to review the decision of the Local Governing Body not to reinstate a permanently excluded pupil.

The legal time frame for an application is:

- within 15 school days of notice being given to the parents by the Local Governing Body 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.

Any application made outside of the legal time frame will be rejected by the Trust.

The Trust will 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 Body considered reinstating the pupil.

The Trust must take reasonable steps to identify a date for the review that all parties,

and any SEN expert appointed to give advice in person, are able to attend. However, the review must begin within 15 school days of the day on which the parent's application for a review was made (panels have the power to adjourn a hearing if required).

**Kernow Learning is currently using the services provided by Cornwall Local Authority for Independent Review Panel hearings.**

**What you can expect from an IRP Panel**

A panel of 3 or 5 members who have been trained in suspensions and permanent exclusions, will be constituted with representatives from each of the categories below, one of whom must be a lay member. Where a 5-member panel is constituted, 2 members will come from the Local Governing Body/Trustees category and 2 members will come from the headteacher category.

- A lay member to chair the panel who has not worked in any school in a paid capacity, disregarding any experience as a school governor, trustee or volunteer
- School governors (LGB members) or trustees who have served as a governor (LGB member) or trustee for at least 12 consecutive months in the last 5 years, provided they have not been teachers or headteachers during this time
- Headteachers or individuals who have been a headteacher within the last 5 years
- A person may not serve as a member of the Independent Review Panel if they:
  - Are an executive of Kernow Learning or a member of the Local Governing Body of the excluding school
  - Are the headteacher of the excluding school, or have held this position in the last 5 years
  - Are an employee of Kernow Learning or the Local Governing Body, at the excluding school (unless they are employed as a headteacher at another school)
  - Have, or at any time have had, any connection with the Kernow Learning school, Local Governing Body, parents or pupil, or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their impartiality
  - Have not had the required training within the last 2 years (see appendix 1 for what training must cover)

A clerk will be appointed to the committee.

The Panel will understand the legislation that is relevant to suspensions and permanent exclusions and the legal principles that apply. Headteachers and Governing Body members of panels are likely to have first-hand experience of the education context that may be relevant to considerations about whether a decision was reasonable in the circumstances.

## Appointing a SEND expert

If requested by parents with their application for an independent review, the trust must appoint a SEND expert to attend the review and must cover the associated costs of this appointment. The trust must make arrangements to indemnify the SEND expert against any legal costs and expenses reasonably incurred as a result of any decisions or actions connected to the review and which are taken in good faith. Parents or a pupil if they are 18 years or over have a right to request the attendance of a SEND expert at a review, regardless of whether the school recognises that their child has SEND. Individuals may not serve as a SEND expert if they have, or at any time have had, any connection with the trust, school, parents or pupil, or the incident leading to the permanent exclusion, which might reasonably be taken to raise doubts about their ability to act impartially. However, an individual should not be assumed to have such a connection simply because they are an employee of the trust. Examples of suitable individuals might include educational psychologists; specialist SEND teachers; SENCOs; and behaviour support teachers.

## Coming to a decision

The independent panel will decide one of the following:

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

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

The panel's decision should not be influenced by any stated intention of the parents or pupil not to return to the school. The focus of the panel's decision is whether there are sufficient grounds for them to direct or recommend that the Governing Body reconsider its decision that the pupil should not be reinstated.

When considering the Local Governing Body's decision in light of the principles applicable in an application for judicial review, the panel should apply the following tests:

- Illegality – did the Governing Body act outside the scope of its legal powers in deciding that the pupil should not be reinstated?
- Irrationality – did the Governing Body rely on irrelevant points, fail to take account of all relevant points, or make a decision so unreasonable that no Governing Body acting reasonably in such circumstances could have made it?
- Procedural impropriety – was the Governing Body's consideration so procedurally

unfair or flawed that justice was clearly not done

### **Notifying parties of the outcome of the review**

If the panel upholds the Governing Body's decision not to reinstate, the clerk will immediately report this to the local authority (who should inform, where a pupil has one, the social worker and VSH), and notify the parents and the Local Governing Body.

Where the panel directs or recommends that the Governing Body reconsider whether a pupil should be reinstated, the Governing Body must 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.

Following a direction to reconsider, unless within ten school days of receiving notice of the panel's decision the Governing Body decides to reinstate the pupil, an adjustment will be made to the school's budget in the sum of £4,000 if the panel has ordered this. In the case of an academy, the school will be required to make an equivalent payment directly to the local authority in whose area the school is located. This payment will be in addition to any funding that would normally follow a permanently excluded pupil. If the Governing Body offers to reinstate the pupil within the specified timescale but this is declined by the parents, no budget adjustment or payment can be made. The Governing Body must comply with any direction of the panel to place a note on the pupil's educational record.

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

- the parents;
- the headteacher;
- the local authority.

## **11. School registers**

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

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

Where an application for an independent review has been made, the Governing Body will

wait until that review has concluded before removing a pupil's name from the register.

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

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

## 12. Monitoring arrangements

The CEO monitors the number of suspensions and permanent exclusions every term and reports back to the Board of Trustees. They also liaise with the local authority to ensure suitable full-time education for suspended or permanently excluded pupils.

### The Board of Trustees' role in monitoring pupils moves

The Board of Trustees will review and challenge attendance data, including suspensions and exclusions and movements off-site. From July 2022 the Board will also analyse the data. For example, the Board should:

- e. Analyse data for patterns, e.g. where a large number of pupils with specific characteristics are affected by pupil moves, and when this has happened
- f. Consider the cost implications of educating pupils off-site
- g. Review whether the data reflects that the school's Behaviour Policy is being implemented effectively and consistently
- h. Monitor interventions in place to support pupils at risk, to prevent suspensions and exclusions
- i. Analyse any variation in the rolling variation of exclusions to understand why it's happening and what can be done to prevent it
- j. Make sure that pupils that are moved off-site are reviewed at regular intervals

## 13. Policy review

This policy is reviewed annually by Kernow Learning or in line with any changes to statutory or DfE guidance. For all monitoring of policies, we adopt a rigorous and reflective approach. We consider multiple perspectives on the effectiveness and success of the policy and procedures in question, incorporating the views of stakeholders. An Equality Impact Assessment is undertaken to ensure that there is no potential for any discrimination, adverse impact in relation to protected characteristics or any conflict with the Trust's values.

## Appendix 1: Local Governing Body and clerk training

Kernow Learning will ensure that all members of a Local Governing Board and clerks have received training within the 2 years prior to the date of any review.

Training must have covered:

- The requirements of the primary legislation, regulations and statutory guidance governing suspensions and permanent exclusions, which would include an understanding of how the principles applicable in an application for judicial review relate to the panel's decision making
- The need for the panel's to observe procedural fairness and the rules of natural justice
- The role of the chair and the clerk of a Local Governing Body
- The duties of headteachers, a Local Governing Body under the Equality Act 2010
- The effect of section 6 of the Human Rights Act 1998 (acts of public authorities unlawful if not compatible with certain human rights) and the need to act in a manner compatible with human rights protected by that Act

Kernow Learning has several free training videos from Browne Jacobson which may be helpful:

Power point presentation from Browne Jacobson – October 2022 (see Central team for link) Exclusions from schools - an update:

<https://www.brownejacobson.com/education/training-and-resources/training-videos/2015/02/exclusions-from-schools-an-update-february-2015>

Ensuring good practice in school exclusions:

<https://www.brownejacobson.com/education/training-and-resources/training-videos/2012/09/exclusions-good-practice-training-videos>

Successfully manage exclusion appeals:

<https://www.brownejacobson.com/education/training-and-resources/training-videos/2012/09/exclusions-independent-review-panels-training-video>

## Appendix 2: Governors' Exclusion review deliberation checklist

The Facts	
Has the school properly and fully presented a case for the exclusion? This involves a two-part test: establishing a serious breach OR persistent breaches of the Behaviour Policy AND showing that the pupil remaining in school would seriously harm either the pupil or others	
Part 1 of two-part test: If the facts are disputed, on the balance of probabilities (i.e. more likely than not), did they occur as alleged by the school?	
Was the decision based on a breach of the Behaviour Policy? Are governors satisfied that the child knew, or ought reasonably to have known, that his/her behaviour breached the behaviour policy?	
Part 2 of two-part test: Are governors satisfied that the pupil's return would 'seriously harm' either the pupil or others? Has the school sufficiently articulated the risk presented to either the pupil themselves or others	
The Process	
Have the pupil and his/her family been properly notified of the exclusion and the hearing and had an adequate opportunity to represent themselves (in an age appropriate way)?	
Did the school provide the pupil with an opportunity to provide a statement? If no statement was obtained, has the school satisfactorily explained why not?	
Has the school provided statements from witnesses, rather than relying on hear-say? Were the statements credible (i.e. taken in the proper way, signed, dated)?	
Have governors been given sufficient information and opportunity to make the right decision? Both written submissions and oral testimony made at the hearing constitute evidence and may be taken into consideration.	
Has the school provided work for the first five days of the exclusion and had it marked?	
Has the Local Authority been advised of the permanent exclusion and put in place educational provision from Day 6 of the exclusion	
Discrimination and Intervention	
Have governors (and Headteacher) considered all relevant school policies, including SEND?	
Are governors satisfied that the exclusion was not based on any element of discrimination? If a pupil is from an at-risk ethnic or social background (e.g. Black Caribbean, Gypsy/Roma, Traveller, LAC), was this given additional	
Has the school properly considered whether the child has Special Educational Needs? Have they considered that disruptive or impulsive behaviour might constitute a social, emotional or mental health need under the SEN Code of Practice?	
If the pupil has an EHCP, did the school conduct an emergency annual review?	
If the pupil is a Looked-After Child, has the school accessed all the resources available from the council?	

In a case of persistent breaches, has the school attempted to identify underlying causes and address them through interventions and support? Have governors received sufficient evidence of this?	
<b>The Headteacher's decision - Natural principles of justice</b>	
Is the decision lawful? An example of an unlawful decision might be where the Headteacher has applied the wrong legal standard or has exceeded his/her powers	
Was the decision fair? An example of unfair decision might be when one pupil is permanently excluded for the same offence as a pupil who was not, where there are no other differences between the pupils to explain this.	
Is the sanction proportionate? Proportionality means that it is the minimum sanction available effectively to achieve the ends required by the school	
Linked to the above, is the decision a last resort? Did the Headteacher consider alternatives (e.g. managed move) and if rejected, has this been explained? Has the school explained why no other sanction would suffice? Did the school do all it could to mitigate against exclusion or has it satisfactorily argued that the behaviour could not have been foreseen?	
Is the decision rational and reasonable? An irrational decision is one that no ordinary and objective person would reasonably make. An example of an unreasonable decision might be one that is unreasoned – for example, if the Headteacher could not give reasons for his/her decision	
<b>Considering reinstatement</b>	
Would reinstatement seriously harm the education or wellbeing of the child or others in the school community? 'Would' requires a higher level of certainty than 'might', 'could', 'is likely to'. 'Serious harm' requires a higher level of impact than 'detriment' – the impact cannot merely be negative, it must be intolerable to governors	
Having considered the child's or parents' evidence, are governors satisfied that any mitigating factors do not excuse/explain the behaviour? This includes bereavement, divorce, family discord, bullying at school, etc.? Did the Headteacher take these mitigating factors into account	
How large a negative impact will the exclusion have on the pupil's education and wellbeing? Are governors satisfied that this negative impact is justified in the circumstances	
<b>If any of these questions cannot be answered with a 'yes', governors must give due consideration to reinstatement. If governors choose not to reinstate, they must clearly explain their decision despite the school's failure to meet these thresholds</b>	

## Appendix 3 Model Agenda example

- 1 Introductions by Chair - names and roles**
- 2 Chair explains how the meeting will be conducted and the reasons for the meeting:**
  - to review the suspension or permanent exclusion;
  - to consider the views of parents;
  - to consider the views of the pupil;
  - to check that the head teacher has had regard to current DfE guidance.
- 3 Chair explains possible outcomes of the meeting:**

The Discipline Committee will decide whether to confirm the suspension or permanent exclusion or reinstate the pupil. A letter will be posted to the parents the following day giving reasons for the committees decision.
- 4 Head teacher presents his/her case in support of the suspension or permanent exclusion. This is followed by questions from the parents, and Trustees/Governors/Independent Headteacher/s.**
- 5 Parents present their views on the exclusion.**

This is followed by questions from the headteacher and trustee/Governors/Independent Headteacher/s.
- 6 Headteacher summarises his/her case in support of the suspension or exclusion.**
- 7 Parents summarise their views on the suspension or exclusion.**
- 8 Chair checks that everyone has said what they want to say.**
- 9 Headteacher, parents and representative (if present) leave the meeting.**
- 11 Trustees/Governors/Independent Headteacher/s make their decision**

(with clerk in attendance).

## Appendix 4 – template letter fixed period suspension

Dear **xxxxxxxxxx**

I am writing to inform you of my decision to suspend **xxxxx** for a fixed period of **xxxxxxx**. This means that he/she will not be allowed in school for this period. The suspension begins/began on **00/00/22** and ends on **00/00/22**.

I realise that this suspension may well be upsetting for you and your family, but the decision to suspend **xxxxxxx** has not been taken lightly. **xxxxxxx** has been suspended for this fixed period because of the combination of :

1. Reason 1
2. Reason 2
3. Reason 3

You have a duty to ensure that your child is not present in a public place in school hours during this exclusion on **00/00/22** unless there is reasonable justification for this. I must advise you that you may receive a penalty notice from the local authority if your child is present in a public place during school hours on the specified dates. If so, it will be for you to show reasonable justification.

We will set work for **xxxxxxx** to be completed on the day specified in the previous paragraph as school day during the period of his exclusion when you must ensure that he is not present in a public place without reasonable justification. Please ensure that work set by the school is completed and returned to us promptly for marking.

You have the right to make representations about this decision to the Discipline Committee. If you wish to make representations, please contact **xxx xxxxx** on/at [xxxxxxx@kernowlearning.co.uk](mailto:xxxxxxx@kernowlearning.co.uk) as soon as possible. Whilst the Discipline Committee has no power to direct reinstatement, they must consider any representations you make and may place a copy of their findings on your child's school record.

You should also be aware that if you think the suspension relates to a disability your child has, and you think disability discrimination has occurred, you have the right to appeal, and/or make a claim, to the First Tier Tribunal (<https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>).

You **xxxxxxx** are requested to attend a reintegration interview with me at **School** on **00/00/22** at **00.00am**. If that is not convenient, please contact the school **xxxxxx** to arrange a suitable alternative date and time. The purpose of the reintegration interview is to discuss how best your child's return to school can be managed. Failure to attend a reintegration interview will be a factor taken into account by a magistrates' court if, on future application, they consider whether to impose a parenting order on you.

You also have the right to see a copy of **xxxxxxx's** school record. Due to confidentiality restrictions, you will need to notify me in writing if you wish to be supplied with a copy of **xxxxxxx's** school record. I will be happy to supply you with a copy if you request it.

You may also find it useful to contact the Coram Children's Legal Centre. They aim to provide

free legal advice and information to parents on state education matters. They can be contacted **on** 01206 714650 **or on** <http://www.childrenslegalcentre.com/>. The advice line is open from 8am to 8pm Monday to Friday, except Bank Holidays and 24<sup>th</sup> December to the 1<sup>st</sup> January.

**XXXXXX's** suspension expires on **00/00/22** and we expect **XXXXXX** to be back in school on **00/00/21** at **00.00am**. Yours sincerely

**XX XXXXX**

Head teacher

## Appendix 5–template letter permanent exclusion

Dear **[Parent's Name]**

I regret to inform you of my decision to permanently exclude **[Child's Name]** with effect from **[date]**. This means that **[Child's Name]** will not be allowed in this school unless he/she is reinstated by the governing body (Discipline Committee) or by an appeal panel.

I realise that this exclusion may well be upsetting for you and your family, but the decision to permanently exclude **[Child's Name]** has not been taken lightly. **[Child's Name]** has been excluded because **[reasons for the exclusion — include any other relevant previous history]**.

Reason 1

Reason 2

Reason 3

You have a duty to ensure that your child is not present in a public place in school hours during the first 5 school days of this exclusion, i.e. on **[specify the precise dates]** unless there is reasonable justification. You could be prosecuted or receive a penalty notice if your child is present in a public place during school hours on those dates. It will be for you to show reasonable justification.

Alternative arrangements for **[Child's Name]**'s education to continue will be made. For the first five school days of the exclusion we will set work for **[Child's Name]** and would ask you to ensure this work is completed and returned promptly to school for marking **[this may be different if supervised education is being provided earlier than the sixth day]**. From the sixth school day of the exclusion onwards — i.e. from **[specify the date]** the local authority **[give the name of the authority]** will provide suitable full-time education. **[set out the arrangements if known at time of writing, if not known say that the arrangements will be notified shortly by a further letter.]**

**[Where pupil lives in a local authority other than the excluding school's local authority]** I have also today informed **[name of officer]** at **[name of local authority]** of your child's exclusion and they will be in touch with you about arrangements for **[his/her]** education from the sixth school day of exclusion. You can contact them at **[give contact details]**.

As this is a permanent exclusion the Discipline committee must meet to consider it. At the review meeting you may make representations to the committee if you wish and ask them to reinstate your child in school. The Discipline committee have the power to reinstate your child immediately or from a specified date, or, alternatively, they have the power to uphold the exclusion in which case you may make representations against their decision to an Independent Review Panel. The latest date by which the committee must meet is **[specify the date — the 15th school day after the date on which the governing body was notified of the exclusion]**. If you wish to make representations to the Discipline committee and wish to be accompanied by a friend or

representative please contact **[name of contact]** on/at **[contact details — address, phone number, email]**, as soon as possible. You will, whether you choose to make representations or not, be notified by the Clerk to the Discipline committee of the time, date and location of the meeting. Please let us know if you have a disability or special needs which would affect your ability to attend the meeting. Also, please inform **[contact]** if it would be helpful for you to have an interpreter present at the meeting.

**[If you think this exclusion relates to a disability your child has, and you think discrimination has occurred, you may raise the issue with the governing body.]**

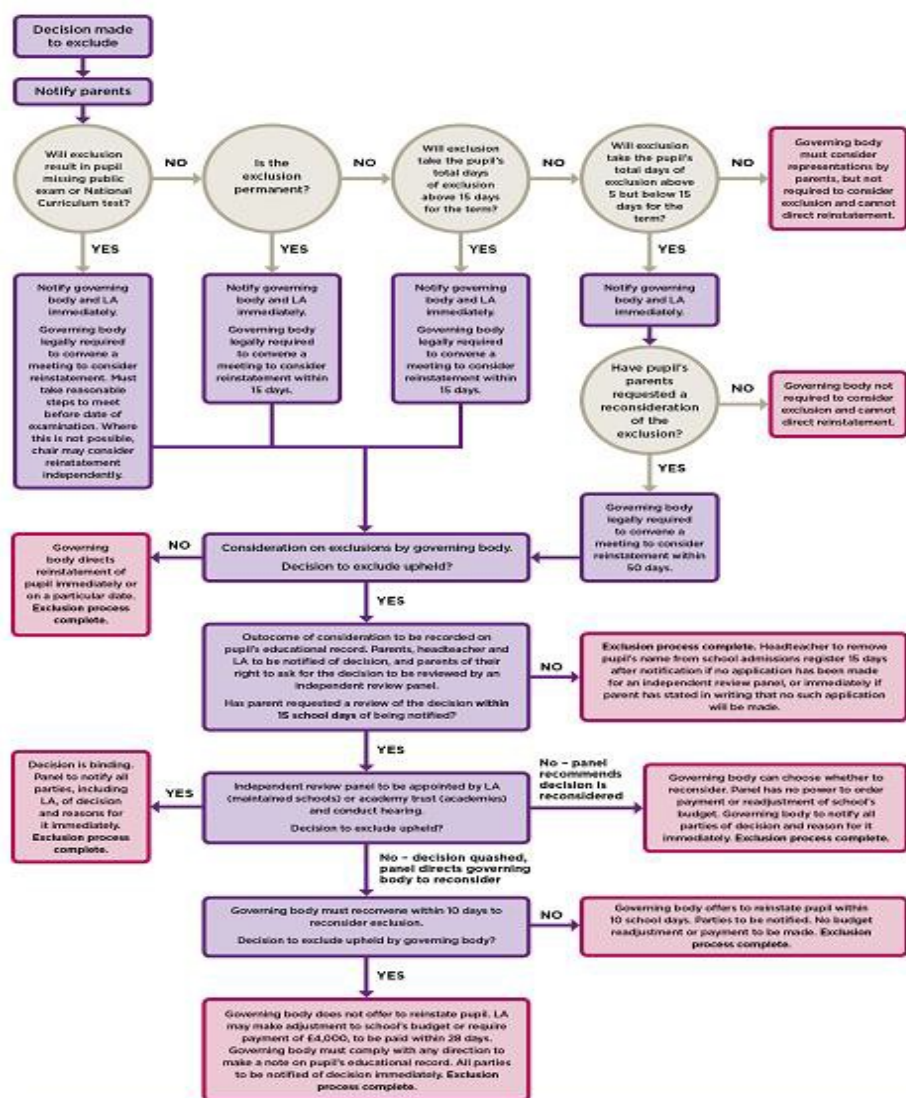
You have the right to see a copy of **[Name of Child]**'s school record. Due to confidentiality restrictions, you must notify me if you wish to be supplied with a copy of **[Name of Child]**'s school record. I will be happy to supply you with a copy if you request it. There may be a charge for photocopying.

You may also wish to contact Cornwall Council's Education Welfare Service on 01872 323400 or email [educationwelfare@cornwall.gov.uk](mailto:educationwelfare@cornwall.gov.uk). This service can provide advice on what options are available to you.

You may also find it useful to contact the Coram Children's Legal Centre. They aim to provide free legal advice and information to parents on state education matters. They can be contacted on 01206 714650 or on <http://www.childrenslegalcentre.com/>. The advice line is open from 8am to 8pm Monday to Friday, except Bank Holidays and 24<sup>th</sup> December to the 1<sup>st</sup> January. **[insert reference to local sources of independent advice if known.]**

Yours sincerely

## Appendix 6 – Guide to exclusions (from the Key)



## Appendix 7 – Checklist for the Headteacher

<b>Investigation and evidence gathering</b>	
<b>1 Has sufficient evidence been gathered?</b>	
<b>2 Do you have witness statements from any victims (if relevant)? Are they signed and dated?</b>	
<b>3 Do you have witness statements from any staff and students who witnessed the incident (if relevant)? Are they signed and dated?</b>	
<b>4 If you have not taken statements from all witnesses, do you have a rationale for that?</b>	
<b>5 Do you have a statement from the excluded pupil? Is it signed and dated?</b>	
<b>6 If not and where age appropriate was the excluded pupil given sufficient opportunity to give a statement or verbal feedback and do you have evidence of this?</b>	
<b>7 Do the statements corroborate?</b>	
<b>8 If not, have you decided which version you believe on the balance of probabilities and why?</b>	
<b>9 Did the school follow its behaviour policy and any other relevant Policies?</b>	
<b>10 Were correct school/Kernow Learning procedures followed when dealing with the incident/behaviour? For example, de-escalation techniques, physical restraint.</b>	
<b>11 Do you believe that the pupil was clear about the school's expectations as set out in the behaviour policy and the potential outcomes?</b>	
<b>12 Do you have a record of strategies and sanctions the school tried before the exclusion, including internal support and outside agency support? For example, class group change, regular check ins</b>	
<b>13 Was the impact of these strategies and sanctions reviewed and evaluated? Collect evidence of evaluations, signed and dated?</b>	
<b>14 Have the parents been involved in (and kept informed about) these strategies and sanctions? Collect any records of meetings or contact with parents.</b>	
<b>15 Do you think the school exhausted all support strategies and interventions for the pupil?</b>	
<b>16 Does the pupil have any identified SEND?</b> <b>a. If yes, does the pupil have an EHCP in place and has appropriate provision been put in place?</b> <b>b. If no, might the pupil have SEND that to date have not been recognised? If so, have any steps been taken to assess?</b>	

<b>17 Have you complied with statutory duties in relation to SEN when administering the exclusion process (if relevant)?</b>	
<b>18 Are there any extenuating circumstances that might reasonably mitigate exclusion for the pupil? For example, family situation, mental health concerns, bereavement,</b>	
<b>19 Have you included any extenuating circumstances in your considerations?</b>	
<b>20 If you discounted any extenuating circumstances, do you have a rationale for this?</b> <b>Making the decision</b>	
<b>21 Do you believe, based on the balance of probabilities, that the pupil has done what is alleged?</b>	
<b>22 Was there a serious breach or persistent breaches of the school's behaviour policy?</b>	
<b>23 Will allowing the pupil to remain in the academy seriously harm the education or welfare of the pupil or others in the academy?</b>	
<b>24 Do you have a rationale for your answers to questions 21 to 23?</b>	
<b>25 Will this exclusion result in the pupil missing a public exam or National Curriculum test?</b>	
<b>26 Do you consider that the decision to exclude this pupil is lawful, rational, reasonable, fair and proportionate? This judgement will be based on your responses to all the previous questions.</b>	
<b>27 Have you (or a colleague) checked the exclusion paperwork for accuracy before issuing?</b>	
<b>28 Have you checked previous exclusions to establish the total for term and year including this exclusion? Note that you cannot exclude for more than 45 days in a year.</b>	
<b>Informing parties about the exclusion</b>	
<b>29 Inform the parents immediately, ideally initially in person or by telephone</b>	
<b>30 Send letter to parents</b>	
<b>31 Exclusion resulting in the pupil missing a public exam or National Curriculum test - notify chair, clerk and LA immediately. Clerk will arrange a panel to review the decision.</b>	
<b>32 Permanent exclusion - notify Trust Safeguarding Lead, Chair, Clerk and LA immediately.</b> <b>With clerk arrange for the Governing Body to meet to consider exclusion</b>	
<b>33 Exclusion taking the pupil's total days of exclusion above 15 days for the term - notify Trust Safeguarding Lead, Chair, clerk and LA immediately.</b> <b>With clerk arrange a panel to review the decision.</b>	
<b>34 Exclusion taking the pupil's total days of exclusion above 5 days but below 15 days for the term - notify Chair, Clerk and LA immediately. If the parents request a reconsideration of the</b>	

<b>clerk who will have to arrange a panel to review the decision.</b>	
<b>Paperwork for panel</b>	
<b>35 Are statements signed and dated?</b>	
<b>36 Are photos or other evidence labelled and dated?</b>	
<b>37 Are names redacted or changed to anonymous, identifying letters to protect the identity of all other individuals</b>	