



BRIGANTIA
LEARNING TRUST

Creating excellence together

Concord Junior School Academy Exclusions policy



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1. Aims

Our academy aims to ensure that:

- › The exclusions process is applied fairly and consistently
- › The exclusions process is understood by trustees, staff, parents and students
- › Students in the academy are safe and happy
- › Students do not become NEET (not in education, employment or training)

2. Legislation and statutory guidance

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

An annex has been added (Appendix 2) to accommodate changes to the academy exclusion process during the coronavirus (COVID-19) outbreak

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

- › Section 52 of the Education Act 2002, as amended by the Education Act 2011
- › The School Discipline (Student Exclusions and Reviews) (England) Regulations 2012
- › Sections 64-68 of the School Standards and Framework Act 1998

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

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

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

3. The decision to exclude

Only the Executive Principal, can exclude a student from the academy. A permanent exclusion will be taken as a last resort.

Our academy is aware that off-rolling is unlawful. Ofsted defines off-rolling as:

“...the practice of removing a student from the academy roll without a formal, permanent exclusion or by encouraging a parent to remove their child from the academy roll, when the removal is primarily in the interests of the academy rather than in the best interests of the student.”

We are committed to following all statutory exclusions procedures to ensure that every child receives an education in a safe and caring environment.

A decision to exclude a student will be taken only:

- › In response to serious or persistent breaches of the academy’s behaviour policy, **and**
- › If allowing the student to remain in the academy would seriously harm the education or welfare of others

Before deciding whether to exclude a student, either permanently or for a fixed period, the Executive Principal will:

- › Consider all the relevant facts and evidence, including whether the incident(s) leading to the exclusion were provoked
- › Allow the student to give their version of events
- › Consider if the student has special educational needs (SEN)

4. Definition

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

5. Roles and responsibilities

5.1 The Executive Principal

Informing parents

The Executive Principal will immediately provide the following information, in writing, to the parents/carers of an excluded student:

- › The reason(s) for the exclusion
- › The length of a fixed-term exclusion or, for a permanent exclusion, the fact that it is permanent
- › Information about parents’/carers’ right to make representations about the exclusion to the Board of Trustees and how the student may be involved in this

- › Where there is a legal requirement for the Board of Trustees to meet to consider the reinstatement of a student, and that parents have a right to attend a meeting, be represented at a meeting (at their own expense) and to bring a friend

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

If alternative provision is being arranged, the following information will be included when notifying parents of an exclusion:

- › 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 student to identify the person they should report to on the first day

Where this 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 an exclusion, in which case the information can be provided with less than 48 hours' notice with parents' consent.

Informing the Trust and local authority

The Executive Principal will immediately notify the Trust and the local authority (LA) of:

- › A permanent exclusion, including when a fixed-period exclusion is made permanent
- › Exclusions which would result in the student being excluded for more than 5 academy days (or more than 10 lunchtimes) in a term
- › Exclusions which would result in the student missing a public examination

For a permanent exclusion, if the student lives outside the LA in which the academy is located, the Executive Principal will also immediately inform the student's 'home authority' of the exclusion and the reason(s) for it without delay.

For all other exclusions the Trust will be supplied with copies of communications to parents/carers.

5.2 The Trust

Responsibilities regarding exclusions is delegated to an Exclusion Panel made up of three people. This panel will be made up of 3 Trustees. Where this is not possible the Trust CEO and or any other member of the Trust Leadership Team or Academy Advisory Member not previously involved in the case can be asked to make up the panel of three members.

The Exclusion Panel has a duty to consider the reinstatement of an excluded student (see section 6).

Provision does not have to be arranged for students in the final year of compulsory education who do not have any further public examinations to sit.

5.3 The LA

For permanent exclusions, the LA is responsible for arranging suitable full-time education to begin no later than the sixth day of the exclusion.

6. Considering the reinstatement of a student

The Exclusion Panel will consider the reinstatement of an excluded student within 15 academy days of receiving the notice of the exclusion if:

- The exclusion is permanent
- It is a fixed-term exclusion which would bring the student's total number of academy days of exclusion to more than 15 in a term
- It would result in a student missing a public examination

If requested to do so by parents/carers, the Exclusion Panel will consider the reinstatement of an excluded student within 50 academy days of receiving notice of the exclusion if the student would be excluded from academy for more than 5 academy days, but less than 15, in a single term.

Where an exclusion would result in a student missing a public examination the Exclusion Panel will consider the reinstatement of the student before the date of the examination. If this is not practicable, the Exclusion Panel will consider the exclusion and decide whether or not to reinstate the student.

The Exclusion Panel can either:

- Decline to reinstate the student, or
- Direct the reinstatement of the student immediately, or on a particular date

In reaching a decision, Exclusion Panel will consider whether the exclusion was lawful, reasonable and procedurally fair and whether the Executive Principal followed their legal duties. They will decide whether or not a fact is true 'on the balance of probabilities', which differs from the criminal standard of 'beyond reasonable doubt', as well as any evidence that was presented in relation to the decision to exclude.

Minutes will be taken of the meeting, and a record of evidence considered kept. The outcome will also be recorded on the student's educational record.

The Exclusion Panel will notify, in writing, the Executive Principal, parents and the LA of its decision, along with reasons for its decision, without delay.

Where an exclusion is permanent, Exclusion Panel decision will also include the following:

- The fact that it is permanent
- Notice of parents'/carers' right to ask for the decision to be reviewed by an independent review panel, and:
 - The date by which an application for an independent review must be made
 - The name and address to whom an application for a review should be submitted
 - That any application should set out the grounds on which it is being made and that, where appropriate, reference to how the student's SEN are considered to be relevant to the exclusion
 - That, regardless of whether the excluded student has recognised SEN, parents have a right to require the academy trust to appoint an SEN expert to attend the review
 - Details of the role of the SEN expert and that there would be no cost to parents for this appointment
 - That parents/carers must make clear if they wish for an SEN expert to be appointed in any application for a review
 - That parents/carers may, at their own expense, appoint someone to make written and/or oral representations to the panel, and parents/carers may also bring a friend to the review
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- That if parents/carers believe that the exclusion has occurred as a result of discrimination, 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. A claim of discrimination made under these routes should be lodged within 6 months of the date on which the discrimination is alleged to have taken place

7. An independent review

If parents/carers apply for an independent review, the academy trust will arrange for an independent panel to review the decision of the Board of Trustees' Exclusion Panel not to reinstate a permanently excluded student.

Applications for an independent review must be made within 15 academy days of notice being given to the parents/carers by the Exclusion Panel of its decision to not reinstate a student.

A panel of 3 or 5 members will be constituted with representatives from each of the categories below. Where a 5-member panel is constituted, 2 members will come from the school governors 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 or volunteer
- School governors who have served as a governor for at least 12 consecutive months in the last 5 years, provided they have not been teachers or head teachers (or equivalent) during this time
- Head teachers (or equivalent) or individuals who have been a Headteacher (or equivalent) within the last 5 years

A person may not serve as a member of a review panel if they:

- Are a member/trustee of the academy trust, or Academy Advisor of the excluding school
- Are the Headteacher (or equivalent) of the excluding school, or have held this position in the last 5 years
- Are an employee of the academy trust, of the excluding school (unless they are employed as a Headteacher at another school)
- Have, or at any time have had, any connection with the academy trust, academy, Academy Advisory Council; parents or student, 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 panel.

The independent panel will decide one of the following:

- Uphold the Exclusion Panel's decision
- Recommend that the Exclusion Panel reconsiders reinstatement
- Quash the Exclusion Panel'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.

8. Academy registers

A student's name will be removed from the academy admissions register if:

- 15 academy days have passed since the parents/carers were notified of the Exclusion Panel's decision to not reinstate the student and no application has been made for an independent review panel, or
- The parents/carers 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 academy will wait until that review has concluded before removing a student's name from the register.

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

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

9. Returning from a fixed-term exclusion

Following a fixed-term exclusion, a re-integration meeting will be held involving the student, parents/carers, a member of senior staff and other staff, where appropriate.

The following measures may be implemented amongst others when a student returns from a fixed-term exclusion:

- Agreeing a behaviour contract
- Putting a student 'on report'
- Internal isolation

10. Monitoring arrangements

The Trust Leadership Team monitors the number of exclusions every term and reports back to the Board of Trustees (Education & Standards Committee). They also liaise with the local authority to ensure suitable full-time education for excluded students.

This policy will be reviewed by the CEO every year. At every review, the policy will be shared with the Board of Trustees.

11. Links with other policies

This exclusions policy is linked to our

- Behaviour policy
- SEN policy and information report

Appendix 1: Independent review panel training

The academy trust must ensure that all members of an independent review panel and clerks have received training within the 2 years prior to the date of the review.

Training must have covered:

- The requirements of the primary legislation, regulations and statutory guidance governing 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 to observe procedural fairness and the rules of natural justice
- The role of the chair and the clerk of a review panel
- The duties of head teachers, governing boards and the panel 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

Appendix 2: Changes to the school exclusion process during the coronavirus (COVID-19) outbreak (updated 29 May 2020)

Introduction

The updated statutory guidance describes the temporary changes made to the school exclusion process due to coronavirus (COVID-19).

These regulations change some of the procedures that must be followed in relation to an exclusion, to give greater flexibility to the academy, parents and where appropriate the local authority during the coronavirus (COVID-19) outbreak.

The normal arrangements and procedures that must follow a decision to exclude on disciplinary grounds are described in the main policy detailed above. These are unchanged except as noted below.

Important dates

The arrangements come into force on 1 June 2020 and will apply to all exclusions occurring from then until 24 September 2020 (inclusive of those dates). The arrangements also apply to:

- permanent and fixed term exclusions occurring before 1 June which have not yet been considered by the academy exclusion panel
- permanent exclusions occurring before 1 June which have been considered by the academy exclusion panel, if they have chosen not to reinstate the pupil and the time limit to apply for a review of this decision has not passed
- permanent exclusions occurring before 1 June where a parent/carer has requested a review of the academy exclusion panel, but this has not yet happened

Any exclusions covered by the arrangements will continue to be subject to them after 24 September 2020, until the procedures for scrutiny of the exclusion have been exhausted.

An exclusion should be taken as having 'occurred' on the first day of the exclusion (not the date when the decision to exclude was made or communicated).

Remote access meetings

When the academy exclusion panel or independent review panels (IRPs) have to meet to consider an exclusion, they can do so via telephone or video-conference software ('remote access') as long as certain conditions are met.

The conditions are that it is not reasonably practicable for the meeting to take place in person, within the usual timescales, because of coronavirus (COVID-19), and that the academy exclusion panel (or arranging authority, if the meeting is an IRP) is satisfied that:

- all the participants agree to the use of remote access
- all the participants have access to the technology which will allow them to hear and speak throughout the meeting, and to see and be seen, if a live video link is used
- all the participants will be able to put across their point of view or fulfil their function
- the meeting can be held fairly and transparently via remote access

It is the responsibility of the academy exclusion panel (or the arranging authority in the case of an IRP meeting) to make sure these conditions are met before a meeting takes place.

The academy exclusion panel or arranging authority should assess the facts of the case, the circumstances in which a meeting in person could be expected to take place, the needs of the intended participants (as far as

this is possible), and the latest public health guidance when determining whether it would be reasonably practicable to meet in person.

Arranging a remote access meeting

The academy exclusion panel or arranging authority should explain the technology they propose to use to participants and should make sure that the participants (particularly pupils and their families) know that they do not have to agree to a meeting to be held via remote access if they do not want to. They should make families aware that if they do not consent to a remote access meeting then the meeting is likely to be delayed.

Though all participants must have agreed to the use of remote access, where a parent or pupil has given their agreement for a meeting to be held via remote access, the other participants should make reasonable efforts to accommodate that preference unless there is a clear reason not to.

The normal requirements for who must be invited to a academy exclusion panel or IRP meeting remain in place. However, those who have no intention of taking part in the meeting should not be treated as 'participants' for the purposes of the conditions stated above.

The academy exclusion panel must comply with relevant equalities legislation and recognise that some participants may find it difficult to participate in a remote access meeting (for example, if someone has a disability or if English is not their first language).

If a meeting is held via remote access, every effort should be made by the chair to check the participants understand the proceedings and can engage with them, to ensure the meeting is conducted fairly. If, once the meeting starts, the meeting cannot proceed fairly (for example, because a participant cannot access the meeting), the academy exclusion panel or IRP should adjourn the meeting.

The use of remote access does not alter other procedural requirements that may apply to the academy exclusion panel, or IRPs. For example, if a parent requests the appointment of a special educational needs (SEN) expert to advise a review panel, the academy trust must appoint one and cover the cost as normal. Parents may bring a friend or representative, as normal.

Though the academy exclusion panel and IRPs must consider written representations if they are made, the law does not allow for solely paper-based 'meetings', conducted in writing.

As long as the conditions for a remote access meeting are met, it is possible for some participants to be present in person and for others to join the meeting via remote access. All the participants must have access to technology which will allow them to hear and be heard by others throughout (and to see and be seen throughout, if a live video link is used).

Timescales for meetings of the academy exclusion panel.

If it has not been reasonably practicable for the academy exclusion panel to meet in person within the original time limit for a reason related to coronavirus (COVID-19) or remotely for a reason relating to the other conditions for a remote access meeting, the time limit for the meeting will be extended.

The time limit for an academy exclusion panel meeting will not be extended if it has already passed before 1 June. The government appreciates that it may not have been possible to meet the normal time limits over recent months, due to the disruption caused by the coronavirus (COVID-19) outbreak and the health risks of holding meetings. The academy exclusion panel should arrange for overdue meetings to take place via remote access, if the conditions for such a meeting are met, or in person as soon as it is safe and practicable to do so.

If a time limit for a meeting has been extended, the academy exclusion panel should reassess at regular intervals whether it is reasonably practicable to meet in person and, if it is, should arrange to do so without delay, in light of the need to minimise uncertainty for pupils and their families as far as possible.

Meetings to consider permanent exclusions, and fixed period exclusions resulting in the pupil missing more than 15 school days in a term

If a pupil is permanently excluded or receives a fixed period exclusion which results in them having been excluded for 16 or more school days in a term, then the academy exclusion panel should try to meet to discuss reinstatement within 15 school days. If it has not been reasonably practicable for the academy exclusion panel to meet face to face within 15 school days for reasons relating to coronavirus (COVID-19), and it has not been reasonably practicable to meet by way of remote access for a reason relating to the conditions for a remote access meeting, the limit will be extended to 25 school days, or as long as reasonably necessary for a reason related to coronavirus (COVID-19).

Meetings to consider fixed period exclusions resulting in the pupil missing between 6 and 15 school days in a term

If a pupil receives a fixed period exclusion which results in them having been excluded for at least 6 school days in a term but not more than 15 school days in that term, and the parent/carer chooses to make representations about the exclusion, then the academy exclusion panel should meet to discuss reinstatement within 50 school days. If it has not been reasonably practicable for the academy exclusion panel to meet face to face within 50 school days for reasons relating to coronavirus (COVID-19), and it has not been reasonably practicable to meet by way of remote access for a reason relating to the conditions for a remote access meeting, the limit will be extended to 60 days, or as long as reasonably necessary for a reason related to coronavirus (COVID-19).

Timescales for application for independent reviews of exclusions

Where an academy exclusion panel declines to reinstate a pupil who has been permanently excluded, parents/carers can apply for a review of the Trust board's decision.

For exclusions covered under these arrangements, the deadline for applications has increased to 25 school days from the date on which notice in writing of the governing board's decision is given to parents/carers.

Schools must wait for the extended period of 25 school days to pass without an application having been made before deleting the name of a permanently excluded pupil from their admissions register, in accordance with the Education (Pupil Registration) (England) Regulations 2006 as amended.

Timescales for meetings of independent review panels to consider permanent exclusions

If it has not been reasonably practicable for a review panel to meet in person within the original time limit of 15 school days for reasons related to coronavirus (COVID-19), and it has not been reasonably practicable to meet by way of remote access for a reason relating to the other conditions for a remote access meeting, the timescale for the meeting will be extended to 25 school days, or as long as reasonably necessary for a reason related to coronavirus (COVID-19).

The time limit for an IRP meeting will not be extended if it has already passed before 1 June. The government appreciates that it may not have been possible to meet the normal time limits over recent months, due to the disruption caused by the coronavirus (COVID-19) outbreak and the health risks of holding meetings. Arranging authorities should arrange for overdue meetings to take place via remote access, if the conditions for such a meeting are met, or in person as soon as it is safe and practicable to do so.