

Introduction

Phoenix Academy endeavours to ensure that exclusion procedures at academies conform to statutory guidance set forth by the Department for Education (DfE) in 2012 and updated in September 2017. As such, this policy supersedes all other school-level handbook or policy statements as relate to exclusions.

Aims

All parties involved in exclusions, including Principals, parents, governing bodies and Independent Review Panels, must have regard to the statutory guidance. At 62 pages long, however, the guidance can be inaccessible and overwhelming to many. This policy aims to set forth rights and responsibilities around exclusion with clarity and brevity to ensure that all exclusion proceedings at Phoenix Academy are conducted in a fair and just manner, with appropriate notice to all, full participation of relevant parties, and within the statutorily designated timelines.

Fixed-Term and Permanent Exclusions

Exclusion can only be for a breach of an academy's behaviour policy, which must be widely published to all pupils and parents, preferably on the academy's website. There are two types of exclusion: fixed-term (or fixed-period) and permanent.

Permanent exclusions may only be in response to persistent breaches of the academy's behaviour policy or for a 'one-off' serious breach of the behaviour policy, and where allowing the pupil to remain in school will be detrimental to the education and welfare of the pupil and/or others at the academy.

There is a limit of 45 school days in an academic year for fixed-term exclusions. The law does not allow for 'converting' a fixed-term exclusion into a permanent exclusion. In cases involving serious breaches of the behaviour policy where additional evidence (including mitigating evidence) is required before making a decision whether to exclude, the school may issue a fixed-term exclusion pending investigation. Following investigation, the school may issue a further separate fixed-term exclusion to begin immediately after the first exclusion ends or a separate permanent exclusion to begin immediately after the end of the fixed-term exclusion.

On the sixth day of an exclusion, the school (or local authority, in the event of a permanent exclusion) must arrange suitable full-time education for any pupil of compulsory school age. Where a pupil receives consecutive fixed-term exclusions, these are regarded as a cumulative period of exclusion for the purposes of this duty. Academies must carefully assess the quality of the alternative educational provision and ensure appropriate safeguarding measures at these providers.

A panel of governors must review permanent exclusions and any fixed-term exclusions which result in the pupil being excluded for more than 15 school days (singly or cumulatively) within one term. Schools are responsible for recording all exclusions on the school's relevant Management Information System (MIS) in a timely manner and keeping careful track of fixed-term exclusions that total more than 15 days in a term.

All exclusions must be reported to Phoenix Academy at t.macdowall@phoenix.futureacademies.org. If an exclusion requires review (i.e. fixed-term exclusions totalling more than 15 days in a term or permanent exclusions), schools should also notify the Governance Team at Phoenix Academy as soon as the exclusion issues, in order to allow the timely arranging and clerking of the required review meetings. Permanent exclusions must also be reported to the local authority immediately to ensure the local authority will be able to fulfil its duty to provide alternative educational provision from the sixth day of the exclusion.

Exclusions must be reported to governors in the Principal's Report.

The Principal's Role in Exclusions

Only the Principal or acting Principal may exclude a pupil. Care must be taken to avoid 'informal' or 'unofficial' exclusions (e.g. sending a child off-site for a 'cooling down' period). However, a pupil whose behaviour at lunchtime is disruptive may be excluded from the school premises for the duration of the lunchtime period. This must be recorded as a half-day exclusion. Academies may also arrange for 'lunchtime respite' as part of a behavioural support plan, but this must be agreed by parents/carers, must be short-term in duration and closely monitored for effectiveness.

Where a pupil has received multiple exclusions or is approaching the legal limit of 45 school days of fixed-term exclusion in an academic year, the Principal should consider whether exclusion is providing an effective sanction.

Exclusions are illegal if they occur for non-disciplinary reasons, such as:

- additional needs for a disability that the school feels it is unable to meet;
- lack of academic attainment/ability;
- the actions of a pupil's parent(s); or
- failure of a pupil to meet specific conditions before reinstatement.

Permanent exclusion should only be used as a last resort where all alternatives have been considered and all strategies to change behaviour have failed. It must be demonstrated that allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the academy.

Where an excluded pupil has Special Educational Needs and Disability (SEND) or is on the SEND register, it must be demonstrated that the academy has regard for the SEND Code of Practice and has provided extensive means of support to help meet the pupil's needs. Early intervention to address underlying causes of disruptive behaviour should include an assessment of whether appropriate provision is in place to support any SEND that a pupil may have. Any intervention strategies should be discussed with and involve the pupil's parents.

Principals should ensure that the behaviour policy of the academy is reviewed on an annual basis and approved by the governing body.

Duty to Inform Parents

The parent(s) must be informed without delay of the length and type of exclusion and of their right to make representations to the governors. Ideally, this notification should be by telephone or in person in the first instance, followed by a letter. Written notification 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 also be sent electronically if the parents have given written agreement for this kind of notice to be sent in this way.

Pupils over 18 have to be informed and have the right to appeal on their own behalf. Pursuant to the duty of care placed on schools to ensure the welfare of pupils, parent(s) must be advised of an exclusion prior to the pupil being sent off-site.

To ensure compliance with the most up-to-date government guidance, Phoenix Academy maintains standard letters for notifying parents of exclusions and an explanatory note to accompany each letter setting forth their rights of representation.

Review of the Decision to Exclude

In all cases of permanent exclusion and fixed-term exclusions amounting to over 15 days in a term (cumulatively or singly), the decision of the Principal must be reviewed by a panel of governors. The panel may be constituted from members of the Local Governing Body of the school and/or the Phoenix Resolutions Committee (the designated sub-committee of governors with responsibility delegated by Phoenix Academy Board of Trustees to attend to disciplinary and grievance matters).

Except in extenuating circumstances, the panel quorum is three governors, with a clerk appointed by Phoenix Academy. One governor on the panel will be designated as the Chair of the meeting and, in the event of a request for external independent review by parents (see section below entitled Independent Review Panel), will represent the panel at that independent review meeting. The Principal cannot be a member of the panel.

Subject to the availability of governors, review meetings should be held within a period of 15 days from the date of the exclusion. It is important that Phoenix Academy is advised of the exclusion without delay and the Principal makes arrangements for paperwork to be prepared immediately.

- Fixed-term exclusions totalling five or fewer school days (or 10 or fewer lunch-times or half days) in any one term must be reported to the governors at each meeting and recorded on the MIS. The governing body must consider any representations made by parents, but it cannot direct reinstatement and is not required to arrange a meeting with parents.
- If an exclusion means that a pupil will miss a public exam, the panel should try to meet before the date of the exam. If this is not practicable, the Chair of Governors may use the emergency powers for Chair's action to review the exclusion alone.
- For fixed-term exclusions of 6 to 15 school days, if the parents make representations, the governing board must consider within 50 school days of receiving the notice of exclusion whether the excluded pupil should be reinstated. In the absence of any representations from the parents, the governing board is not required to meet and cannot direct the reinstatement of the pupil.
- For fixed-term exclusions that singly or cumulatively total more than 15 days in one term, and for

permanent exclusions, the panel must hold a formal hearing within 15 school days, whether or not the parent(s) make representations.

The review panel may confirm the exclusion and decline to reinstate or direct reinstatement of the pupil. There is no legal option to impose a lesser sanction, i.e. to commute a permanent exclusion to a fixed-term one. The review panel may direct reinstatement for any pupils excluded for a fixed-term of more than five days or pupils who would miss a public exam or permanently excluded. If the pupil is to be reinstated, a re-integration programme should be planned with the school.

If reinstatement is not practicable – because the pupil is already back in school or because the parent does not want it – the review panel must consider the representations made by the school and parent(s), and decide whether or not the exclusion was justified. The decision should then be included in the pupil's record.

After the governor review hearing, the clerk will inform the parties in writing about the result, with reasons for the decision. Decisions are communicated as soon as possible and every attempt is made to do this within 5 working days.

Principles of Natural Justice

- All factual determinations are based on a balance of probabilities, both by Principals and at any subsequent review. This means that the Principal/reviewing panel should accept that something happened if it is more likely that it happened than that it did not happen. In making their decisions to exclude, Principals must ensure that their decisions are fair, based on the facts of the incident and do not include any elements of discrimination.
- Members of the panel should be impartial, unprejudiced, have taken no previous part in the specific case, and have no personal or school interest in its result. Principals should not discuss individual exclusions with members of their governing body as cases may be referred to the governing body for review.
- Parent(s) should be informed of the case put forward by the school and have an opportunity to challenge it.
- Both parties should be allowed to present their case without unreasonable interruption. Aggressive, repetitive or unnecessarily over-long presentations hinder the effectiveness of the review process and the Chair will retain discretion to curtail any such presentation.
- Parent(s) should be able to bring a friend or adviser with them. An effective meeting, however, will not be able to accommodate large groups of people and the Chair retains ultimate discretion as to the attendance of invited parties beyond a reasonable number.
- All documents to be used in evidence should be distributed to all parties at least five working days before the hearing. If new material is introduced at the hearing, all parties must have time to consider it. Should such material be voluminous, the Chair has the discretion to adjourn the meeting to allow proper review.
- No party to the hearing should be in the presence of the panel unless the other party is also present. Every party should feel that they have had a full opportunity to present their case and have it duly considered.

Standard of Evidence for Panel Meetings

Guidance has been issued for Principals and governors to clarify the legal standards for review and the high quality of documentary evidence required for panel meetings. Principals and staff members delegated with responsibility for investigating breaches of behaviour policies should refer to this guidance. There should be no delays in gathering evidence and witness statements, both for reliability of recall and given the legal obligation to review exclusions within short statutory deadlines.

Independent Review Panel

If a permanent exclusion is upheld, parent(s) must be told of their right to seek an independent review of the decision reached by governors and the deadline for seeking such a review. They also have the right to request the attendance of a SEND expert at the Independent Review Panel meeting. Decision letters sent by Phoenix Academy to the parent(s) will include these details of the right of independent review. The parent(s) have 15 school days (from the date of receipt of the review panel's decision) to seek an independent review.

Within 15 school days of such a request, Phoenix Academy will engage the services of an external clerking agency to arrange and clerk the Independent Review Panel. The independent review is normally attended by the Principal, lead academy staff member on the case, and Chair of the original review panel. The clerk of the original panel may attend but plays no formal part in proceedings. Where the parent(s) has legal representation or it is considered appropriate on behalf of the academy, it may be agreed that the academy should also have legal representation. This will be arranged by Phoenix Academy.

The Independent Review Panel cannot direct a governing body to re-instate a pupil. It may:

- a) uphold the exclusion;
- b) recommend that the original panel reconsider its decision; or
- c) quash the original panel's decision and direct the panel to reconsider its decision.

In the latter case, the Independent Review Panel will then be expected to order that the school must make a payment to the Local Authority of £4,000 if it does not offer to reinstate the pupil.

Parallel police proceedings

The governing body has no power to delay a hearing beyond the statutory time limit because of police proceedings. If a permanent exclusion is upheld in these circumstances, the parent has 15 days to request independent review in the normal way.

Other relevant legislation and guidance

The principal legislation, guidance and regulations to which this guidance relates is:

- Education Act 2002, as amended by the Education Act 2011;
- School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012;
- Education and Inspections Act 2006;
- Education Act 1996; and

- 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;
- Exclusion from Maintained Schools, Academies and Pupil Referral Units in England - Statutory Guidance for those with Legal Responsibilities in Relation to Exclusion (September 2017)
- School attendance: Guidance for maintained schools, academies, independent schools and local authorities (November 2016)
- SEND code of practice: 0 to 25 years (updated 1 May 2015);
- Special Educational Needs and Disability Regulations 2014 (Part 4); and
- Equality Act (2010).