



New Forest Small School

EXCLUSIONS POLICY

Member of Staff Responsible	Headteacher
Regularity of Review	2 yearly

1. RATIONALE

1.1 **Scope:** This policy contains guidelines, which will be adapted as necessary, explaining the circumstances under which a student may be excluded on a fixed term or permanent basis from New Forest Small School. The policy applies to all students at the School. This policy can be made available in large print or other accessible format if required.

1.2 This policy takes account of the School's public sector Equality Duty set out in section 149 of the Equality Act 2010.

1.3 **Interpretation:** The definitions in this clause apply in this policy.

Exclusion: means a dismissal from the School for a fixed term or permanently following serious misconduct. A fixed term exclusion can be from ½ day to up to 45 days in a School year.

2. POLICY STATEMENT

2.1 **Aims:** The aims of this policy are:

- to support the School's 's Behaviour policy
- to ensure procedural fairness and natural justice
- to promote co-operation between the School and parents when it is necessary for the School that a student should leave earlier than expected.

2.2 **Misconduct:** The main categories of misconduct, which may result in exclusion being considered as one of the possible sanctions, according to the Behaviour Policy, are:

Any incident of the following (classified as 'Level 3' misconduct in the Behaviour Policy)

- Physical violence, abuse, bullying, blackmail, intimidation or deliberately endangering the safety of another pupil, a staff member, or a visitor
- Theft or vandalism
- Bringing illegal items to school
- Being under the influence of drugs or alcohol during school hours
- Sexual misconduct, including the supply and use of pornography
- Committing any other criminal offence, either within school or outside school
- Bringing the school into disrepute

Second or subsequent incident of any of the following (classified as 'Level 2' misconduct in the Behaviour Policy), after a sanction and formal warning:

- Verbal abuse
- Significant disruption in class, which interferes with other pupils' learning
- Use of any language that is racist, sexist, homophobic, transphobic or otherwise discriminatory under the Equality Act 2010
- Unintentionally endangering safety of another person
- Minor damage to school property
- Bringing items that are prohibited by school rules, but not illegal, to school
- Breach of ICT & Media agreement
- Unauthorised access to restricted areas, files or documents

For an incident of Level 3 misconduct, the first exclusion is 1 day, a subsequent exclusion is 3 days and a third exclusion is 5 days. Exclusion would not normally be considered as a sanction for the first incident of 'Level 2' misconduct, as the School's policy is to explore the underlying causes of challenging behaviour and to adopt a reasoned approach based on restorative justice. If however, a single incident of misbehaviour in this category has caused significant distress to an individual or group of people, or in other exceptional circumstances, exclusion may be considered as a response to a single incident.

2.3 Behaviour related to special educational needs and disabilities

The School will make reasonable adjustments for managing behaviour which is related to a student's special educational needs and/or disabilities. Where exclusion needs to be considered, the School will take appropriate measures to ensure that a student with SEND is able to present their case fully where the SEN or disability might hinder this. This is particularly relevant for students with an Education, Health & Care Plan.

In the case of students who do not have an EHCP or a school-led Individual Education Plan, serious or persistent misbehaviour may be seen as grounds to suspect that a student may have emerging, or previously undetected, special educational needs or disabilities, and/or there may be a safeguarding or welfare issue. Such cases should always be reported to the SENCO / Designated Safeguarding Lead, in parallel with the disciplinary process, and attempts made to ascertain if there is any underlying reason for the misbehaviour.

3. PRACTICE

3.1 Investigation procedure

- **Incidents/ Complaint(s):** Investigation of an incident, complaint or rumour about serious misconduct will normally be co-ordinated by the Head Teacher who will then make a final decision. Parents will be informed of a fixed term exclusion and if a complaint is still under investigation of a nature that could result in the student being excluded as soon as reasonably practicable.
- **Fixed term exclusion:** A student may be subject to a fixed term exclusion and would be required to stay at home for the duration of up to and including five school days. A student may also be required to stay at home whilst a complaint is being investigated or while an investigation is adjourned, see 'adjournment of an investigation' below. Should a fixed term exclusion continue for a period of more than five School days, the School is required to make and put in place arrangements

to ensure the continuing education of the student. The Head Teacher will co-ordinate these arrangements with the student's parents/carers or guardians. Parents/carer or guardians should note that there may be a delay in providing work whilst teaching staff are given the opportunity to determine what work should be set within 2 days for exclusions of over 3 days. Alternatively, the student may be placed under a segregated regime on School premises whilst further investigation of the complaint, allegation or incident takes place.

- **Search:** See the School's Behaviour Policy for details regarding the School's procedure for searching students.
- **Interview:** A student may be interviewed formally by the Head Teacher to establish whether there are grounds for a potential exclusion and further investigation of the incident/rumour or complaint. Notes of the student's statement will be recorded in writing by the administrator, which the student will be asked to then read and sign. Alternatively the student maybe asked to write their own personal statement.

For serious incidents with the potential outcome being a permanent exclusion, the student's parents will be contacted with the opportunity for the parents to attend the formal interview and accompany their child. Prior to any formal meeting the student will be segregated and made comfortable.

- **Ethos:** An investigation and any subsequent meeting will be conducted fairly and in a way that is appropriate to a School, without formal legal procedures.
- **Adjournment of an investigation:** It may be necessary to adjourn an investigation, for example where external agencies such as the police or social services are involved and have advised that this is necessary. A decision to adjourn an investigation will take into account advice from an appropriate external agency and will be subject to periodic review.

Please see the School's Behaviour Policy and Teaching & Learning Policy.

3.2 Meeting before the Head Teacher

3.2.1 Preparation: Documents and the investigation report will be presented by Head Teacher before the meeting and will include:

- a statement setting out the points of complaint against the student
- written statements and notes of the evidence supporting the complaint, and any relevant correspondence
- the student's file and conduct record
- the relevant School policies and procedures

3.2.2 Proceedings: The Head Teacher will consider the incident/complaint and the evidence, including statements made by and / or on behalf of the student. The Head Teacher meets with the Student will then writes up the evidence. Unless the Head Teacher considers that further investigation is needed, she will decide whether the complaint has been sufficiently proven.

If the complaint has been proven the Head Teacher will outline the range of disciplinary sanctions which he/she considers are open to him/her. The student's disciplinary record will be taken into account. Then, or at some later time, normally within 24 hours, the Head Teacher will give his/her decision, with reasons.

3.2.3 Notification: The parents will be notified immediately by telephone by the Head Teacher where possible, and followed up with a letter including the reasons for the exclusion, the date it will take effect and the period of the exclusion.

The Head Teacher will inform the relevant local authorities of permanent exclusions, and exclusions which would result in the student being excluded for more than five School days in any one term, within one School day of the decision and will provide detailed exclusion reports, or a student missing an external examination. The Head Teachers will automatically meet to review a decision to exclude a student which results in him/her missing a public exam.

Where the exclusion results in the student missing between five and a half and 15 School days in the term, or missing a public examination, the parents may request a meeting with the Head Teacher. The letter informing the parents of the exclusion will explain who the parents should contact to arrange this meeting. Parents are not entitled to request a review meeting where the exclusion is for five days or less. If parents wish to make representation about such a decision, they should write to the Head Teacher.

The Head Teacher will automatically review exclusions which result in the student missing more than 15 School days in the term and permanent exclusions.

3.2.4 Reintegration Interview after a fixed term exclusion

The School will arrange a reintegration interview with the parents and students for all fixed term exclusions of six or more days, although this is not a legal requirement. At least one of the child's parents is expected to attend the meeting. The New Forest Small School will organise a reintegration meeting with parents for all fixed term exclusions so that positive behaviour can be reinforced and any strategies needed to be discussed.

3.3. Review by the Governors' Advisory Board

The Governors' Advisory Board may meet to review a decision;

- to exclude a student permanently from the school
- to exclude a student at a time that would cause them to miss a public examination.

A meeting of the Head Teachers and Governors' Advisory Board will be held before the 15th School day after the date of the exclusion. Where parents have requested such a meeting, it will be held by the 50th School day after they were informed of the exclusion. Parents will be invited to the meeting, told in advance of the date and location and will be given the opportunity to make representations at the meeting.

Where legally required to consider an exclusion, the role of the Head Teacher is to:

- uphold the fixed term exclusion or
- direct the student's reinstatement either immediately or on a particular date.

Where the exclusion is upheld by the Head Teacher, the parents will be informed by a letter posted within 3 working days, explaining the reasons for the decision and details of the review procedure

4. INDEPENDENT REVIEW PANEL – FOR PERMANENT EXCLUSIONS

The role of the panel is to review the Head Teachers decision not to reinstate a permanently excluded pupil. In reviewing the decision, the panel must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and people working at the school.

The panel must apply the civil standard of proof, (i.e. 'on the balance of probabilities' it is more likely than not that a fact is true) rather than the criminal standard of 'beyond reasonable doubt'.

4.1 Independent review panel (IRP)

The School will conduct this procedure in accordance with the law and relevant guidance. An Independent Review Panel should be provided to parents upon request if the Head Teacher has upheld a decision to permanently exclude a student. Parents also have the right to request that an SEN expert attends the IRP and should make this request at the time of requesting a review. Parents may also, at their own expense, appoint someone to make written and / or oral representations to the panel and may also bring a friend to the review meeting.

4.2 Request for a review

A request for a review must be made in writing setting out the grounds on which it is made. The letter from the Head Teacher will indicate the latest date by which a review may be lodged. This is within 15 school days of notice being given to the parents of their decision to uphold a permanent exclusion.

4.3 Timing

A review panel will meet to consider the review no later than the 15th School day after the day on which the review was lodged. Parents will be informed of the date and location of the hearing. The hearing may be adjourned if the panel consider that it would not be appropriate to proceed, for example where additional information is required.

4.4 Composition of the panel

The review panel will consist of three or five members and will be appointed by Head Teacher. A member can also be appointed who can provide independent advice to all of the parties and will circulate all written evidence to the parties at least 5 School days before the hearing. Parents should contact the member if they have any questions about this procedure. If requested by parents in their application for an independent review panel, the school must appoint a SEN expert to attend the panel meeting. This SEN expert will not have or at any time have had any connection with the school, parents or student.

4.5 Role of the panel

The review panel will hear all of the facts of the case, including any fresh evidence. A review panel may:

- uphold the decision to permanently exclude or
- Recommend that the Head Teachers reconsider their decision or
- Quash the decision and direct that the Head Teacher and Head Teachers reconsiders the exclusion

4.6 Conduct of hearing

The hearing will be conducted in a suitable venue and informal manner. Parents may be accompanied by a friend or representative. All parties will have the opportunity to put forward their case.

The clerk to a review panel should ensure that minutes of the proceedings are taken, including details of the attendance, the voting and the decision.

The minutes are not public documents but should be retained by the Head Teacher for a period of at least five years, as they may need to be seen by a court or (in the case of maintained school) by the Local Government Ombudsman.

The School should be aware of their duties under the Freedom of Information Act 2000 and the Data Protection Act 1998 when retaining information.

Statutory guidance to the independent review panel and clerk on notifying

4.7 Procedure

The panel will decide on the balance of probabilities whether the student did what he or she is alleged to have done and the basis for the Head Teacher's decision and the procedures followed having regard to :

- whether the Head Teacher complied with the law and relevant guidance in deciding to exclude the student
- the School's Behaviour Policy, Equal Opportunities Policy and, if appropriate, Anti-Bullying Policy and Special Educational Needs Policy and the fairness of the exclusion in relation to the treatment of any other students involved in the same incident.

The panel will make their decision and apply the civil standard of proof. They will also consider the Head Teachers decision in light of the principles that apply to judicial review.

4.8 Decision

The panel's decision is binding on the student and parents, the Head Teacher and the Local Authority. All parties will be informed of the decision and the reasons for it by the end of the second working day after the hearing. If the exclusion is upheld, the member will immediately inform the relevant local authorities.

The panel may only quash the decision where it considers that it was flawed when considered in the light of the principles applicable on an application for judicial review (statutory guidance on this consideration is provided in appendix A).

4.9 Complaint:

If parents have a complaint about maladministration by the appeal panel, they should contact the Local Education Authority.

4.10 Parental Rights

Parents have the right to make a claim under the Equality Act 2010 to the First Tier Tribunal (Special Educational Needs and Disabilities) if they believe the exclusion to have been made as a result of the disability discrimination.

4.11 Referral back the head teachers

If the IRP requests that the head teachers reconsider their decision the Head Teachers must reconvene to do so within 10 school days of being given notice of the panel's decision. Notice is deemed to have been given on the same day if it is delivered directly or on the second working day after posting if it is sent by first class mail.

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

- the parents;
- the head teacher;
- the local authority and, where relevant, the 'home authority'.

5. MONITORING

This policy will be monitored on an ongoing basis throughout the year as appropriate and when exclusions are made to ensure that correct practice is followed.

6. SCHOOL FEES

Due to the inability to immediately fill a students place, if a student is permanently excluded, a terms fees will still be payable.

Related Policies:

Behaviour
Equalities and Cohesion
SEN and Disabilities

This policy has been written to take into account and effect the new Exclusions legal requirements September 1st 2012

Appendix A: Judicial Review

When considering the decision of the Governors' Advisory Board in light of the principles applicable in an application for judicial review, the panel should apply the following tests:

- **Illegality** – did the head teacher and / or members of the Governors' Advisory Board act outside the scope of their legal powers in taking the decision to exclude?
- **Irrationality** – was the decision of the Governors' Advisory Board not to reinstate the pupil so unreasonable that it was not one a sensible person could have made?
- **Procedural impropriety** – was the process of exclusion and the governing body's consideration so unfair or flawed that justice was clearly not done?

Procedural impropriety means not simply a breach of minor points of procedure but something more substantive that has a significant impact on the quality of the decision making process. This will be a judgement for the panel to make but the following are examples of the types of things that could give rise to procedural impropriety: bias; failing to notify parents of their right to make representations; the Head Teachers making a decision without having given parents an opportunity to make representations; failing to give reasons for a decision; or being a judge in your own cause (for example, if the head teacher who took the decision to exclude were also to vote on whether to uphold the exclusion).

In all other cases the panel should uphold the exclusion.