The Governing Body Meeting to Consider Exclusions

This document is intended to provide the Chair, Governors and Clerk with guidance for running a Meeting of the Governing Body to consider exclusion.

It is important that the governors on the panel understand that they ‘own’ the meeting and not the Head teacher. How the meeting is arranged and conducted, is a vital part of working with the parents/carers of the pupil involved to support the young person’s future. The meeting should be mutually convenient to all parties including the parents/carer, the date and time of the meeting should be agreed with the parents/carers in the first instance

## **Membership of the panel**

This can be between 3 and 5 governors but must not be less than 3. An odd number of governors are strongly recommended. Members should, as far as possible, have no prior knowledge of the matter, which means that the detail of individual pupil exclusions must not be discussed in governors’ meetings. To discuss the matter in advance will compromise the ability of governors to reach a fair decision, based on natural justice, and could make the process invalid, and flawed.

Governors must not sit on the panel if any of the following apply:

* they know the pupil and/or his/her family;
* they witnessed the incident that led to the exclusion;
* they have a child in the same class as the pupil involved, or have a child who was a witness to the incident and has told them about it;
* they have a spouse/partner who was involved in the incident;
* for any other reason they may not be able to be impartial;
* they are a member of the school staff;
* they are the chair of governors and has already discussed the pupil with the head teacher.

## **Chairing the meeting**

A full member of the governing body must chair the meeting. The Chair of Governors may act as chair, provided that he/she has not discussed the matter before with anyone, especially the head teacher but it can be one of the other governors. Only full governors can take part. Associate Members of the governing body may not sit on the panel.

## **Clerking the meeting**

In Norfolk the Local Authority (LA) strongly recommends that, in cases where the Clerk to Governors is an employee of the school, he/she should not clerk meetings of the governing body relating to exclusions. This is in case parents bring an allegation that he/she influenced the governor’s decision when left alone with the panel during their private deliberation of the matter and was not impartial. Evidence and arrangements regarding the meeting can be organised by members of the school.

Governor Service’s offers an independent Clerking Service that governing bodies can purchase if they wish.

An agenda (including details of who will be present at the meeting) should be included in the evidence pack which must be sent to all parties at least 5 school days prior to the meeting (this includes to the parents/carers and the Local Authority). A sample agenda can be found in Appendix A.

## **Order of the meeting**

1. **Noting attendance**

The Clerk should take minutes and a list of the names of everyone who is present at the meeting

* the governor members of the panel, stating who is in the chair;
* the head teacher and any other members of school staff present;
* the parents/carers and anyone accompanying them, i.e. a friend or representative;
* the pupil, if in attendance, and if not, how their views have been captured;
* the LA Officer, if in attendance;
* the clerk.

The clerk should also note if the parents/carers do not attend, stating when and how they were invited to attend, and how and whether they had indicated that they would be present. Governors also need to detail the pupil’s views and how they were obtained if they or their parent/carer do not attend. Parent/carers may be delayed for whatever reason and it is at the chair’s discretion whether the start of the meeting will be briefly postponed, but in the light of natural justice it would be appropriate to allow parents/carers sufficient time to attend.

1. **Apologies**

The clerk should note any apologies offered.

**NB** the meeting must not take place with less than 3 governors.

1. **Chair’s welcome, introductions and opening remarks**

The Chair of the panel should welcome everyone, and either perform introductions or ask people to introduce themselves. He/she should state the purpose of the meeting and outline its format.

The purpose of the meeting:

* to establish whether, based on the facts known at the time, the head teacher took the right action in excluding the pupil;
* to consider whether the type or length of period of exclusion was appropriate;
* to ensure the exclusion was reasonable, fair and appropriate taking into account the head teacher’s legal duties;
* where the governing body is legally required to consider an exclusion, they 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 in the school;
* (if a permanent exclusion) to establish that the headteacher’s decision warrants a permanent exclusion and is:

* in response to serious 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 in the school.

Based on the evidence presented to them the governors on the panel have two basic options:

* to reinstate the pupil, immediately or a future date; or
* to decline to reinstate

In order to help them reach their judgement the meeting should take the following pattern.

1. **Verbal statement from the Head teacher**

This will be in support of any written evidence previously circulated. The Head teacher must be able to make his/her case on the day – it is not sufficient to rely on information previously sent out. He/she may invite other staff members to attend to offer supporting evidence, being careful not to be over represented. Governors, parents/carers may make comments/ask questions after the school has presented their case.

Written evidence should be circulated in advance to all the parties involved at least 5 days prior to the meeting. Witness statements should be signed and dated unless there is good reason not to, but may need to be redacted. The excluded pupil’s views should also be sought prior to the hearing, taking into account their age and understanding.

Where the Head teacher may need to outline a series of events/poor behaviour, it is acceptable to provide a list of the pupil’s transgressions and a report from the Head teacher giving the reasons why they feel the exclusion is justified. Sufficient documentary evidence must also be provided to allow governors to obtain a full picture of the situation, i.e. behaviour logs; copies of any Pastoral Support Plans, Individual Education Plans and Risk Assessments; details of any intervention strategies used and the outcomes; whether a Family Support Plan or referral to Early Help has been offered or provided; details of any special education needs/disabilities and how these were supported; and copies of any assessment reports from external agencies, e.g. Educational Psychologist assessments and recommendations.

1. **Questions to the Head teacher**

Panel members (governors) may ask questions to clarify points after Head teacher has presented his/her case as well as parents/carers and Local Authority representative.

1. **Verbal statement from the parent/carer (or pupil if appropriate)**

This should support any written evidence that they asked to be circulated in advance. The parent/carer/pupil may ask that their friend or representative speak on their behalf

1. **Questions to parents/carers**

Panel members (governors) may make ask questions as well as Head teacher and Local Authority representative. If the pupil is in attendance, they may also be questioned

1. **Representations from the LA Officer**

Where an officer is in attendance at a maintained school the LA Officer may ask questions and make representations, and the panel may also ask for advice/guidance or clarity. In the case of an academy, the LA Officer may attend the meeting if invited by the governing board or requested by parents. However, at an academy the LA Officer can only observe unless permission is given for them to contribute by the panel.

1. **Final clarification**

The Chair of the panel should ensure that allparties, especially the parents/carers/pupil, have had an opportunity to say what they wish to and that all points are clear. Governors should be confident that they have all the information they need to be able to reach a correct decision.

1. **Reaching a Decision**

At this point everyone other than the governors and clerk should withdraw from the meeting, to allow the governors to discuss the case/s under consideration and form a judgement.

In the case of a short fixed-term exclusion of 5 days or fewer, if the panel do not ‘uphold’ the head teacher’s decision they cannot direct reinstatement as this is not within their power, but a note should be placed on the child’s file.

When reviewing other exclusions of more than 5 days, when reinstatement is not practical (because for example the pupil has returned to school following the end of a fixed term exclusion) the governing body must, in any event, consider whether the head teacher’s decision to exclude the child was justified based on the evidence. In this case a note should be attached to the child’s school record, to clarify whether the panel supports the head teacher’s actions.

The panel may agree that whilst a fixed period of exclusion was the correct action to take, the number of days given was too severe. In this case, the panel may decide to reinstate the pupil sooner than planned. This does not have to be immediately but may be from an earlier date than initially set down. Governors may also want to consider whether, if it has not already happened, a brief time needs to be allowed for the Head teacher and staff to plan for the child’s reintegration.

Where the panel judged that exclusion was not the correct course of action, it may reinstate the pupil, as outlined above. In these cases, some of the following might apply:

* the Head teacher did not provide relevant or sufficient evidence to support his/her case for an exclusion, or;
* the panel judged that insufficient strategies had been put in place to support the pupil prior to the incident that resulted in the exclusion (i.e. it could have been avoided if the school had given better support), or;
* the parent/carer has made an acceptable representation against the exclusion, e.g. provided evidence of mitigating circumstances, provided evidence to support their child’s views with regard to their case;
* the child had not been given a voice at the meeting and their views captured by the school;
* strategies could include the use of a Pastoral Support Plan; a risk assessment of the potential hazard the pupil presents or faces; or some time at a Specialist Resource Base; or in the case of Looked After Children, whether their Personal Education Plan has been reviewed;
* based on the balance of probabilities they felt the head teacher’s decision was not lawful, reasonable and procedurally fair.

There are times when pupils with Education, Health and Care Plans are exhibiting behaviour that might lead to their exclusion or have been excluded. In these cases, the school should have requested a review of this to establish that the child has the appropriate level of support in the school or whether the placement needs to be reviewed. This may not always be possible for a one-off offence of physical violence, etc. An external review may also be requested where pupils and their behaviour has deteriorated.

Where a child with an Education, Health and Care Plan is excluded from school, the panel should always ask what the school has done to support the pupil before exclusion is imposed and satisfy itself that the school has done all it can. Schools should call a review if they feel the pupil’s behaviour has deteriorated or the pupil if struggling to cope. Parents/carers of a pupil with an Education, Health and Care Plan must be informed of their right to appeal to a First Tier Tribunal with regard to any exclusion.

If parents believe that the exclusion has occurred as a result of discrimination, they may make a claim under the Equality Act 2010, so the panel need to consider whether the school has made reasonable adjustments with regard to the disability.

The clerk will take Minutes of:

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* the evidence and questions by all parties;
* the main points of the discussion by panel members;
* the decision reached and the supporting reasons;
* how the pupil’s views were captured.

The panel may include comments or make recommendations but cannot place conditions on the outcome - possible suggestions could be to draw together a mutually agreeable Pastoral Support Plan for the pupil, or for the school to request support or assessments from external agencies.

Where all parties have chosen to stay to be told the decision they should be invited back into the meeting room to receive this. However, it is not an opportunity for further discussion of the case. In any event, a formal letter detailing the decision, and setting out detailed reasons why governors have reached their conclusion, should be sent to the parent/ carer without delay, either hand delivered or posted by first class mail.

## **Further action**

For a fixed-term exclusion there is no further right of appeal by the parents/carers– the decision of the Governor’s panel is final, unless the pupil has special educational needs or a disability in which case they can go to First Tier Tribunal.

In the case of a permanent exclusion, the parents/carers must be informed in the letter from the panel of how they can make an application to an Independent Review Panel.

Where parents make an application against a permanent exclusion to an Independent Review Panel (IRP) after the governing body meeting, an IRP can only uphold the decision, recommend that the governing body reconsider their decision, or quash the decision and direct the governing body reconsider the exclusion again. An IRP cannot direct reinstatement, only the Governing body and the First Tier Tribunal can reinstate.

If a case has been sent back to governors and the IRP have either recommended that they reconsider, or the decision is Quashed and the governing body is directed to reconsider, this must take place 10 school days from the date of receipt of the outcome of the Independent Review Panel. It is then the decision of the governing body to review the decision not to reinstate and write to the parent, head teacher and local authority of their decision without delay.

Copies of all paperwork,(letter and minutes) must be sent without delay to the Exclusions Team at Norwich Professional Development Centre, 144 Woodside Road, Norwich, NR7 9QL or by e mail to: exclusions@norfolk.gov.uk.

Minutes of the meeting should be held in a Governors Confidential Minute folder in the Head teacher’s Office and a copy of the letter attached to the pupil’s school record. These do not need to be circulated unless requested.

One copy of all paperwork needs to be kept as a parent can go the First Tier Tribunal for disability discrimination before and after an Independent Review, and claims can be made up to 6 months after the review.

**Appendix A – Sample Agenda**

The Governing Board hearing to consider the permanent/fixed term exclusion of [Pupil’s name] will be held on [Date of the Meeting and Time] at

[Venue].

The following members will be on the review panel:

(please insert the names of the panel members).

The following parties will also be in attendance:

(please insert names of all parties who will be present)

**Agenda**

1. Welcome and introductions
2. Explanation of procedure
3. The School/Academy’s case – evidence for exclusion
4. Questions to the school – parties rights to question the School/Academy
5. The Parent/Pupil’s Case
6. Questions to the Parent/Pupil – parties rights to question Parents/Pupil
7. Questions/Representations from LA
8. Closing – check all parties have had a chance to say what they wanted to say
9. Explanation of how and when parties will be notified of the decision
10. Parent/Carer/Pupil, School, Local Authority leaves the room.