

# THE CHARTER SCHOOLS

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## EDUCATIONAL TRUST

# Exclusion policy

<b>Author</b>	S Varcoe	<b>Date:</b> September 2020
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## Statement of Intent

At The Charter Schools Educational Trust (the 'Trust'), we understand that good behaviour and discipline is essential for promoting a high-quality education.

As a Trust, we do not wish to suspend or permanently exclude any child from any of our schools but on rare occasions, this may be necessary. Our aims are to ensure that:

- The process is applied fairly and consistently
- The process is understood by Trustees, local governors, staff, parents and pupils
- The Trust and its schools maintain a safe and caring environment in which all pupils can learn and succeed
- Rigorous Early Help strategies are used to support pupils to reduce the need for any suspension or permanent exclusion
- Pupils do not become NEET (not in education - employment or training)

Amongst other disciplinary sanctions, our schools recognise that the exclusion of pupils may be necessary where there has been a serious breach, or consistent breaches, of the school's Behaviour Policy. The exclusion a pupil may also be required in instances where allowing the pupil to remain in school would be damaging to the education and welfare of themselves or others; in all cases, exclusion of a pupil will only be used as a means of last resort.

The Trust has created this policy to clearly define the legal responsibilities of the Headteacher, Governors and the Local Authority when responding to pupil exclusions, to ensure that they are dealt with both fairly and lawfully, and in line with DfE statutory guidance.

This policy also aims to secure a pupil's right to an education despite having been excluded, by ensuring that appropriate alternative arrangements are in place.

## Definitions:

The Department for education has started to refer to '**fixed-term**' or '**fixed-period**' exclusions as '**suspensions**'. This refers to the temporary removal of a pupil from the school for a violation of the school's behaviour policies, for one or more fixed periods (up to a maximum of 45 school days in a single academic year).

A '**permanent exclusion**' is the most serious sanction a school can give if a pupil does something that is against the school's behaviour policy. It means that the pupil is no longer allowed to attend the school and their name will be removed from the school roll.

Throughout this policy we will refer to 'exclusions' when talking about both fixed-term or permanent exclusion; 'fixed-term exclusions' when referring to a temporary removal of a pupil and 'permanent exclusion' when referring to a permanent exclusion where a pupil's name is removed from the school roll.

## 1. Legislation and statutory guidance

This policy has due regard to all relevant legislation including, but not limited to, the following:

- Section 52 of the Education Act 2002, as amended by the Education Act 2011
- The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012
- 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](#)
- European convention on Human Rights (ECHR)
- Equality Act 2010

This policy also has due regard to statutory and non-statutory guidance, including, but not limited to, the following:

- [DfE \(2017\) 'Exclusion from maintained schools, academies and pupil referral units in England'](#)
- DfE (2016) 'Behaviour and discipline in schools'
- DfE (2015) 'Special educational needs and disability code of practice: 0 to 25 years'
- DfE (2018) 'Mental health and behaviour in schools'

This policy operates in conjunction with the following school policies:

- Behaviour Policy
- Anti-Bullying Policy
- Pupil Code of Conduct
- Special Educational Needs and Disabilities (SEND) Policy
- Child Protection and Safeguarding Policy

## 2. The decision to exclude

Only the Headteacher, or acting Headteacher (including Heads of School in the absence of the Headteacher), can exclude a pupil from school and this must only be on disciplinary grounds. A permanent exclusion will be taken as a last resort.

Our schools are aware that off rolling is unlawful. Ofsted defines off rolling as:

*"...the practice of removing a pupil from the school roll without a formal, permanent exclusion or by encouraging a parent to remove their child from the school roll, when the removal is primarily in the interests of the school rather than in the best interests of the pupil."*

We actively discourage parents removing their child from school to home educate and notify the LA of our concerns.

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

The school will only permanently exclude a pupil where it is absolutely necessary, and where all other possible disciplinary sanctions, as detailed in the school's Behaviour Policy, have failed to be successful, or in response to a one-off very serious incident.

The following examples of behaviour may lead to the school's decision to permanently exclude a pupil:

- Any incident which poses a risk to other pupils or members of staff, e.g. bringing a weapon onto the premises
- Any incident which breaches the law
- Persistent and severe bullying
- Verbal and physical abuse
- Constant disruption
- A single, serious and major incident, e.g. serious assault on another individual leading to injury

Pupils can be excluded on a fixed-term basis (also known as suspension), up to 45 school days within a year, or permanently. Similarly, pupils can be permanently excluded following a fixed-term exclusion, where further evidence is presented. In all cases, the headteacher will decide which exclusion period a pupil will be subject to, depending on what the circumstances warrant.

Before deciding whether to exclude a pupil, either permanently or for a fixed-term, the Headteacher will:

- Consider all the relevant facts and evidence, including whether the incident(s) leading to the exclusion were provoked
- Allow the pupil to give their version of events
- Consider if the pupil has special educational needs (SEN) or is a looked after child

### **3. School day definition**

For the purposes of exclusions, 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.

### **4. Roles and responsibilities**

The Local Authority (LA) is responsible for:

- Having due regard to the relevant statutory guidance when carrying out its duties in relation to the education of LAC.
- Arranging suitable full-time education for any pupil of compulsory school age excluded permanently, in coordination with the school.
- Reviewing and reassessing pupils' needs in consultation with their parents where they have an EHC plan and are excluded permanently, with a view to identifying a new placement.

The Charter Schools Educational Trust is responsible for:

- Arranging for an independent review panel hearing to review the decision of the governing board not to reinstate a permanently excluded pupil where required.
- Arranging the hearing without delay at a time, date and venue convenient for all parties.

- Ensuring the independent review panel consists of three or five members as appropriate, which represent the required categories.
- Appointing a clerk to provide advice to the panel and parties to the review on procedure, law and statutory guidance on exclusions.
- Ensuring all panel members and the clerk have received training within the two years prior to the date of the review.
- If requested by parents, appointing a SEND expert to attend the panel and covering the associated costs of this appointment.

The individual school Local Governing Body (LGB) is responsible for:

- Providing information to the Secretary of State and LA about any exclusions within the last 12 months.
- Arranging suitable full-time education for any pupil of compulsory school age excluded on a fixed-term basis, from the sixth day onwards of a fixed-term exclusion.
- Considering parents' representations about exclusions within 15 school days of receiving notice if the appropriate requirements are met.
- Where an exclusion would result in a pupil missing a public examination or test, considering the exclusion before this date.
- Considering whether it would be appropriate for a pupil to be permitted onto the school premises to sit the public examination or test.
- Arranging the representation meeting at a time and date convenient to all parties, but in compliance with the statutory time limits.
- Adhering to its responsibilities to consider the reinstatement of pupils.
- Considering the interests and circumstances of the excluded pupil, including the circumstances in which they were excluded, and have due regard to the interests of others at the school.
- Using the civil standard of proof (based on the 'balance of probabilities', it is more than likely that the fact is true) when establishing the facts relating to an exclusion.
- Ensuring clear minutes are taken of the representation meeting.
- Noting the outcome of the representation meeting on the pupil's education record, along with copies of relevant papers for future reference.
- Notifying the pupil's parents, the headteacher and LA of its decision and the reasons for it, without delay.
- Where appropriate, informing parents of where to apply for an independent review panel.
- Informing parents of relevant sources of information.
- Ensuring a pupil's name is removed from the school admissions register, where appropriate.
- Reconvening within 10 school days to reconsider reinstatement of a pupil where directed to do so by the exclusions review panel.

The Headteacher is responsible for:

- Implementing good levels of discipline to ensure all pupils can benefit from the opportunities provided by education and to minimise potential exclusions.
- Applying the civil standard of proof when establishing the facts in relation to an exclusion.
- Complying with their statutory duties in relation to pupils with SEND when administering the exclusion process, as outlined in the Special Educational Needs and Disabilities (SEND) Policy.

- Considering any contributing factors that are identified after an incident of poor behaviour has occurred, e.g. if a pupil has suffered bereavement, bullying or has a mental health issue.
- Considering the use of a multi-agency assessment for a pupil who demonstrates persistent disruptive behaviour.
- Reviewing the effectiveness of exclusions as a sanction, e.g. if a pupil has received multiple exclusions or is approaching the legal limit for exclusions in an academic year.
- Considering what extra support may be needed to identify and address the needs of individual pupils, particularly those with SEND, eligible for FSM, LAC and those from certain ethnic groups.
- Engaging effectively with parents in supporting the behaviour of pupils with additional needs.
- Determining whether a pupil will be excluded on disciplinary grounds.
- Withdrawing any exclusions that have not been reviewed by the LGB, where appropriate.
- Ensuring any decision to exclude is lawful, rational, reasonable, fair and proportionate.
- Complying with the requirements of the Equality Act 2010 when deciding whether to exclude a pupil.
- Ensuring they have considered their legal duty of care when sending a pupil home following an exclusion.
- Making the decision to exclude based on the evidence available at the time, regardless of any police investigation and/or criminal proceedings.
- Notifying a pupil's parents without delay where the decision is taken to exclude the pupil, including the days on which the parents must ensure the pupil is not present in a public place at any time during school hours, as well as any other necessary information statutorily required.
- Ensuring that all information provided to parents is clear and easily understood.
- Notifying the LGB and LA of their decision to exclude a pupil where appropriate, as well as the pupil's home authority if required.
- Notifying the LGB and the Trust Board once per term of any exclusions not already notified.
- Organising suitable work for excluded pupils where alternative provision cannot be arranged.

## 5. The Headteacher's power to exclude

Only the Headteacher has the power to exclude a pupil from the school and is able to decide whether this is on a fixed-period or permanent basis. All exclusions will only be issued on disciplinary grounds.

The Headteacher is able to exclude pupils from the premises where their behaviour is disruptive during lunchtime. All lunchtime exclusions will be counted as half of a school day. The headteacher is also able to consider a pupil's disruptive behaviour outside of the school premises as grounds for exclusion, in accordance with the school's Behaviour Policy.

When sending a pupil home following any exclusion, the Headteacher will ensure that they exercise their duty of care at all times and will always inform the parents.

Any decision made to exclude a pupil will be lawful, proportionate and fair, with respect to legislation relating directly to exclusions and the school's wider legal duties, including the ECHR. At all times, the Headteacher will consider their legal duties under the Equality Act 2010 and the 'Special educational needs and disability code of practice: 0 to 25 years', ensuring that they do not discriminate on any grounds, e.g. race, sex, disability, and will not increase the severity of a pupil's exclusion on these grounds.

The Headteacher will apply the civil standard of proof when responding to the facts relating to an exclusion, i.e. that 'on the balance of probabilities' it is more likely than not that the facts are true.

The Headteacher may withdraw any exclusion that has not already been reviewed by the LGB.

The Headteacher will not issue any 'informal' or 'unofficial' exclusions, e.g. sending a pupil home to 'cool-off', regardless of whether or not the parents have agreed to this. The Headteacher will not use the threat of exclusion as a means of instructing parents to remove their child from the premises.

All exclusions will be formally recorded on the school pupil information management system.

## **6. Factors to consider when excluding a pupil**

When considering the exclusion of a pupil, the Headteacher will:

- Allow the pupil the opportunity to present their case.
- Consider any contributing factors that are identified after a case of poor behaviour has occurred, e.g. if the pupil's wellbeing has been compromised, or they have been subjected to bullying.
- Take into consideration whether the pupil has received multiple exclusions or is approaching the legal limit of 45 excluded days per school year, and whether exclusion is serving as an effective sanction.
- Consider early intervention to address underlying causes of disruptive behaviour, including liaising with external agencies, to assess pupils who demonstrate consistently poor behaviour.

The Headteacher will consider what extra support may be available for vulnerable pupil groups whose exclusion rates are higher, to reduce their risk of exclusion, including the following:

- LAC
- Pupils eligible for FSM
- Pupils with SEND
- Certain ethnic groups

The Headteacher will consider avoiding the permanent exclusion of specific groups of vulnerable pupils where possible, including looked after children, and those with identified SEND or SEMH needs. Where any member of staff has concerns about a vulnerable pupil and their behaviour, they will report this to the Headteacher, who will instigate a multi-agency assessment to determine whether the behavioural issues might be a result of educational, mental health or other needs and vulnerabilities.

Where a pupil with behavioural issues also has identified SEND or SEMH issues, an individual behaviour plan will be created using the graduated response outlined in the school's Behaviour Policy. If the pupil continues to endanger the physical or emotional wellbeing of other pupils or staff, despite exhausting the graduated response process, then the Headteacher may decide to exclude the pupil. The Headteacher may also decide to exclude a pupil with identified SEND or SEMH issues before a graduated response process has been completed in the event of a very serious breach of the school's behaviour policy, and where allowing the pupil to remain in school would be detrimental to the safety and wellbeing of staff and other pupils.

Where a pupil with SEND or SEMH issues is permanently excluded because of a SEND- or SEMH-related need that could not be met at the school, detailed records will be kept highlighting that these pupils are closely tracked and showing that the school has a close relationship with the pupil's next destination.

The Headteacher will work in conjunction with the parents of any pupil with additional needs to establish the most effective support mechanisms.

## **7. Duty to inform parents**

Following the Headteacher's decision to exclude a pupil, they will immediately inform the parents, in person or by telephone, of the period of the exclusion and the reasons behind this.

The Headteacher will inform the parents in writing (electronically if written permission has been received from the parents for notices to be sent this way) of the following:

- The reason(s) for the exclusion
- The length of the fixed-period exclusion or, for a permanent exclusion, the fact that it is permanent
- Their right to raise any representations about the exclusion to the Local Governing Body (LGB), including how the pupil will be involved in this and how the representations will be made
- Their right to attend a meeting where there is a legal requirement for the LGB to consider the exclusion, and the fact that they are able to bring an accompanying individual
- The arrangements that have been made for the pupil to continue their education prior to the organisation of any alternative provision, or the pupil's return to school
- Relevant sources of free, impartial information

Where the pupil is of compulsory school age, the Headteacher will inform the parents by the end of the afternoon session that for the first five days of the exclusion (or until the start date of any alternative provision or the end of the exclusion where this is earlier), parents are legally required to ensure that their child is not present in a public place during school hours without justification, and that parents may receive a penalty fine if they fail to do so.

Where the Headteacher has arranged alternative provision, they will also inform the parents of the following:

- The start and end date for any provision of full-time education
- The address at which the provision will take place
- Any information necessary for the pupil to identify the person they should report to on the starting date

Where the Headteacher is unable to provide information on alternative provision by the end of the afternoon session, they will provide the information in a subsequent written notice without further delay, and within 48 hours of the pupil beginning the provision. If the alternative provision is due to begin before the sixth day of the exclusion, the Headteacher is able to give less than 48 hours of notice, with parental consent.

If the Headteacher has decided to exclude the pupil for a further fixed period following their original exclusion, or to permanently exclude them, they will notify the parents without delay and issue a new exclusion notice to parents.

## **8. Duty to inform the Trust Board, the Local Governing Body and the LA**

The Headteacher will inform the Trust Board, the Local Governing Body and the LA, without delay, of the following:

- Any permanent exclusions (including where a fixed-period exclusion is followed by a decision to permanently exclude the pupil)

- Any exclusions which would result in the pupil being excluded for more than five school days in a term (or more than 10 lunchtimes)
- Any exclusions which would result in the pupil being absent from an examination or national curriculum test

For any exclusions, other than those above, the Headteacher will notify the Trust Board, the Local Governing Body and the LA once per term. All notifications to the Trust Board, the Local Governing Body and the LA will include the reasons for exclusion and the duration of any fixed-period exclusion.

If the pupil who is excluded lives outside the LA in which the school is located, the Headteacher will notify the pupil's 'home authority'.

## **9. Arranging education for excluded pupils**

During the period up to and including the first five days of an exclusion the school will arrange for work to be set for the pupil to complete at home.

For any fixed-period exclusions of more than five school days, the LGB will arrange suitable full-time education for the pupil, which will begin no later than the sixth day of exclusion. Where a pupil receives consecutive fixed-period exclusions, these will be regarded as cumulative, and full-time education will still have to be provided from the sixth day of exclusion. For permanent exclusions, full-time education will also be provided for the pupil from the sixth day of exclusion by the LA.

The LGB will not arrange full-time education for any pupil who is currently in their final year of compulsory education, and who does not have any further public examinations to sit.

The LGB is aware that it is beneficial to excluded pupils to begin their alternative education arrangements before the sixth day of exclusion; therefore, the LGB will attempt to arrange alternative provision before the sixth day of exclusion. Where it is not possible to arrange alternative provision during the first five days of exclusion, the school will ensure that they take reasonable steps to set and mark work for the excluded pupil.

If a pupil with SEND has been excluded, the LGB will ensure that:

- Any alternative provision is arranged in consultation with the pupil's parents, who are able to request preferences.
- When identifying alternative provision, any EHC plan is reviewed or the pupil's needs are reassessed, in consultation with the pupil's parents.

## **10. Reintegration of a pupil following a fixed term exclusion**

Immediately following a fixed term exclusion, the pupil and their parent(s) will be invited into school to meet with a member of the school's senior leadership team. The purpose the meeting is to:

- Assist the reintegration of the pupil
- Agree with parents/carers how best to support and improve the pupil's behaviour following the incident which led to the exclusion
- Determine whether there is a need to implement any further specific measures to support the pupil to move forward with their education

A record of the meeting will be made, and any agreed actions will be shared with the pupil and their parent(s).

## **11. Considering the reinstatement of a pupil**

The LGB will consider any representations made by parents regarding exclusions via the Pupil Disciplinary Committee (PDC).

This will be a committee of at least three local governors who have no prior connection to the pupil and with no prior involvement in the exclusion. All members of the committee must have received appropriate training on exclusions within the past two years. If the individual LGB is unable to find three governors who fulfil these requirements, governors from any of the other schools within the Trust can be used to sit on the committee.

Parents and, where requested, a friend or representative, and the Headteacher and other senior school staff where appropriate will be invited to attend any consideration of exclusions and will be able to make representations. Parents may request that the local authority and/or the home local authority attend a meeting of the LGB as an observer; that representative may only make representations with the LGB's consent.

Any meeting to consider reinstatement of a pupil will be arranged at a date and time convenient for all parties, and in compliance with any statutory time limits.

The LGB must consider the reinstatement of an excluded pupil, where:

- The exclusion is permanent.
- The exclusion is fixed period and would bring the pupil's total number of excluded school days to more than 15 in any given term.
- The exclusion would result in the pupil missing a public examination.

In the case of a fixed-period exclusion where the pupil's total number of excluded days is more than 5 but less than 15 school days within a term, if requested by the parents, the LGB will consider exclusions within 50 school days of receiving notification.

In the case of a fixed period exclusion, where the pupil's total number of excluded school days does not amount to more than five, in the absence of any such representations, the LGB is not required to meet and cannot direct the reinstatement of the pupil.

Where exclusion would result in a pupil missing a public examination, the LGB will consider the exclusion before the test to decide whether the pupil should be reinstated in time to take the examination.

If it is not practicable for a sufficient number of governors to consider the decision before the examination, a smaller sub-committee will consider the exclusion and decide whether or not to reinstate the pupil.

In light of the above, the LGB will also consider whether it would be appropriate to allow the excluded pupil to enter the premises to take the examination.

When considering the reinstatement of an excluded pupil, governors will:

- Only discuss the exclusion with the parties present at the meeting.
- Ask for any written evidence prior to the meeting.
- Circulate any written evidence and information to all parties, at least five school days in advance of the meeting.
- Allow pupils and parents to be accompanied by a person of their choice to the meeting.
- Consider what reasonable adjustments need to be made to support the attendance and contribution of parties at the meeting.

- Identify the steps needed to enable and encourage the excluded pupil to attend the meeting and speak on their behalf, or how they may contribute personal views by other means if attendance is not possible.
- Consider the interests and circumstances of the excluded pupil, including the grounds for exclusion, and have regard to the interests of other pupils and people working at the school.

After considering exclusions, the governors will either:

- Decline to reinstate the pupil.
- Direct the reinstatement of the pupil immediately, or on a specified date.

If reinstatement would make no practical difference, e.g. if the pupil has already returned to school following a fixed-period exclusion or the parents make clear they do not want their child reinstated, the governors will still consider whether the pupil should be officially reinstated, and whether the Headteacher's decision to exclude the pupil was fair, lawful and proportionate, based on the evidence presented.

Governors will apply the civil standard of proof when responding to the acts relating to an exclusion, i.e. that on the 'balance of probabilities' it is more likely than not that the facts are true.

To reach a decision, the governors will:

- Identify the steps they intend to take to ensure that all parties involved will have the opportunity to participate and present their views.
- Ensure that minutes are taken of the meeting as a record of the evidence that was considered.
- Ask all parties to withdraw from the meeting before concluding their decision.
- Consider whether the exclusion of the pupil was lawful, proportionate and fair, taking into account the headteacher's legal duties and any evidence that was presented to the governing board in relation to the decision to exclude.
- Record the outcome of the decision on the pupil's educational records, along with copies, which will be kept for at least six months.
- Make a note of their findings, where they have considered an exclusion but cannot reinstate the pupil.

## **12. Notification of considered exclusions**

The Pupil Discipline Committee will notify the parents of the excluded pupil, the Headteacher and, if required, the LA of their decision following the consideration of an exclusion, in writing and without delay.

In the case of a permanent exclusion, where the PDC decides not to reinstate the pupil, they will notify the parents:

- That it is permanent, and their right for it to be reviewed by an independent review panel.
- Of the date by which an application for review must be made.
- Of the name and address of whom the review application should be submitted to.
- That any application should set out the grounds on which it is being made and that, where appropriate, this should include reference to how a pupil's SEND is considered relevant to the exclusion.
- That, regardless of whether a pupil has been identified as having SEND, the parents have a right to require the The Charter Schools Educational Trust to ensure a SEND expert attends the review.
- Of the role of the SEND expert that will attend the review, and that the parents will not be charged for this.
- That they are required to make it clear if they wish for a SEND expert to attend the review.
- That they may appoint someone at their own expense to make representations to the panel.

The PDC will also notify parents that if they 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.

### **13. Removing permanently excluded pupils from the school register**

The Headteacher will remove pupils from the school register if:

15 school days have passed since the parents were notified of the governors' decision not to reinstate the pupil and no application for an independent panel review has been received.

The parents have stated in writing that they will not be applying for an independent panel review following a permanent exclusion.

If an application for an independent panel review has been made within 15 school days, the Headteacher will wait until the review has been determined, or abandoned, and until the LGB has completed any reconsideration that the panel recommended or directed it to carry out, before removing the pupil from the school register.

If a pupil's name is to be removed from the register, the Headteacher will make a return to the LA, which will include:

All the particulars which were entered in the register.

The address of any parent with whom the pupil normally resides.

The grounds upon which the pupil's name is to be removed from the register.

Any return to the LA will be made as soon as the grounds for removal are met and no later than the date in which the pupil's name was removed.

If a pupil's name has been removed from the register and a discrimination claim is made, the pupil may be reinstated following a decision made by the First-tier Tribunal (SEND) or County Court.

### **14. An independent review**

If parents apply for an independent review, the The Charter Schools Educational Trust will arrange for an independent panel to review the decision of the Pupil Discipline Committee not to reinstate a permanently excluded pupil.

Applications for an independent review must be made within 15 school days of notice being given to the parents by the Pupil Discipline Committee of its decision not to reinstate a pupil.

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 exclusion.

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

A panel of three or five members will be constituted with representatives from each of the categories below. Where a 5-member panel is constituted, two members will come from the school governors' category and two 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 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 a review panel if they:

- Are a member or director of The Charter Schools Educational Trust or 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 The Charter Schools Educational Trust, or a member of the Trust Board, or of the LGB 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 Charter Schools Educational Trust, school, 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)

## 15. Appointing a SEND expert

If requested by parents in their application for an independent review panel, the Trust will appoint a SEND expert to attend the panel and covers the associated costs of this appointment. Parents 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.

The Trust will 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.

An individual will 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 exclusion, which might reasonably be taken to raise doubts about their ability to act impartially.

The SEND expert will be a professional with first-hand experience of the assessment and support of SEND, as well as an understanding of the legal requirements on schools in relation to SEND. Examples of suitable individuals might include educational psychologists, specialist SEND teachers, SENCOs and behaviour support teachers.

Recently retired individuals are not precluded from fulfilling this role; however, during interview, the Trust will assess the knowledge of such individuals in order to ensure that they have a good understanding of current practice and the legal requirements on schools in relation to SEND.

Whilst individuals are not automatically taken to be partial simply because they are contracted by the Trust, they will not have had any previous involvement in the assessment or support of SEND for the excluded pupil, or siblings of the excluded pupil. The Trust will request that prospective SEND experts declare any conflict of interest at the earliest opportunity.

The final decision on the appointment of a SEND expert is for the Trust to make, but it will take reasonable steps to ensure that parents have confidence in the impartiality and capability of the SEND expert. Where possible, this will include offering parents a choice of SEND expert. In order to meet its duties within the

statutory time frame, the Trust will consider maintaining a list of individuals capable of performing the role of SEND expert in advance of a request.

The Trust will determine the amount of any payment in relation to the appointment of the SEND expert, such as financial loss, travel and subsistence allowances.

## **16. The role of a SEND expert**

The SEND expert's role is analogous to an expert witness, providing (orally and/or written) impartial advice to the panel on how SEND might be relevant to the exclusion. The SEND expert will base their advice on the evidence provided to the panel. The SEND expert's role does not include making an assessment of the pupil's SEND.

The focus of the SEND expert's advice will be on whether the Trust and school's policies which relate to SEND, or the application of these policies in relation to the excluded pupil, were legal, reasonable and procedurally fair. If the SEND expert believes that this was not the case, they will, where possible, advise the panel on the possible contribution this could have made to the circumstances of the pupil's exclusion.

Where the school does not recognise that a pupil has SEND, the SEND expert will advise the panel on whether they believe the school acted in a legal, reasonable and procedurally fair way with respect to the identification of any SEND that the pupil may potentially have, and any contribution that this could have made to the circumstances of the pupil's exclusion.

The SEND expert will not criticise a school's policies or actions simply because they believe a different approach should have been followed or because another school might have taken a different approach.

## **17. Appointing a clerk**

The Trust will appoint a clerk to the independent review panel and will ensure that the clerk did not serve as clerk to the PDC when the decision was made not to reinstate the pupil.

## **18. The role of a clerk**

The clerk's role is to provide advice to the panel and parties to the review on procedure, law and statutory guidance on exclusions.

The clerk will:

- Identify, in advance of the meeting, whether the excluded pupil wishes to attend the panel hearing, taking reasonable steps to enable the pupil to feedback their views, irrespective of their attendance.
- Identify, in advance of the meeting, whether any alleged victims of the incident(s) leading up to the exclusion wish to attend the panel hearing, taking reasonable steps to enable them to feedback their views, irrespective of their attendance.
- Ensure that the panel is able to hear from any witnesses to the incident(s) leading to the exclusion, taking into account the fact that some of these people may be pupils at the school. Pupils under 18 will not be allowed to appear in person without parental consent.
- Inform the parents, Headteacher, the PDC and the Trust board, that they are entitled to make oral and written representations to the panel, attend the hearing, and be represented.

- Ensure that all parties are:
  - Provided with copies of relevant papers at least five school days before the review, notifying the panel if any requested documents have not been provided in case the panel wishes to adjourn until a later date.
  - Informed about who is attending the meeting, and what their roles are.
- Attend the review and ensure that minutes are produced in accordance with instructions from the independent review panel.

## 19. The duties of the independent review panel

The role of the panel is to review the PDC's decision not to reinstate a permanently excluded pupil. In reviewing the decision, the panel will 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 will apply the civil standard of proof, rather than the criminal standard of 'beyond reasonable doubt'.

Following the review, the panel will do one of the following:

- Uphold the decision
- Recommend that the governing board reconsiders reinstatement
- Quash the decision and direct that the governing board reconsiders reinstatement

The panel's decision does not have to be unanimous and can be decided by a majority vote. It is binding on the pupil, parents, the LGB, Headteacher and the Trust.

## 20. Reconsidering reinstatement following a review

Where the independent review panel **instructs** the governors to reconsider their decision not to reinstate a pupil, they will do so within 10 school days of being given notice of the review panel's decision.

The school is aware that if, following an instruction to reconsider, the governing board does not offer to reinstate the pupil, then the school will be required to make a payment of £4,000 directly to the LA area in which the school is located.

Where the independent review panel **recommends** that the governors should reconsider their decision not to reinstate a pupil, they will do so within 10 school days of being given notice of the review panel's decision. The school is aware that if, following a recommendation to reconsider, the governors do not offer to reinstate the pupil, it will not be subject to a financial adjustment. If, following reconsideration, the governors offer to reinstate the pupil, but the parents decline, no adjustment will be made to the school's budget.

Following reconsideration, the governors Pupil Discipline Committee will notify the parents, the Headteacher and the LA of their reconsidered decision and the reasons for this.

## 21. Criminal investigations

The Headteacher will not postpone taking a decision to exclude a pupil due to a police investigation being underway, or any criminal proceedings that are in place.

Particular consideration will be given by the Headteacher when deciding to exclude a pupil where evidence is limited by a police investigation, to ensure that any decision made is fair and reasonable.

If the LGB is required to consider the Headteacher's decision in these circumstances, they will not postpone the meeting and will make a decision based on the evidence available.

## **22. Training requirements**

The Trust will ensure that all local governors are given access to appropriate governor training on considering exclusions.

The Trust will ensure that all independent review panel members and clerks have received appropriate training within the two years prior to the date of the review. Training will cover:

The requirements of the legislation, regulations and statutory guidance governing exclusions.

- The need for the panel to observe procedural fairness and the rules of natural justice.
- The role of the chair of a review panel.
- The role of the clerk to a review panel.
- The duties of headteachers, governing boards and the panel under the Equality Act 2010.
- The effect of section 6 of the Human Rights Act 1998 and the need to act in a manner compatible with human rights protected by that Act.

Clerks will also have an up-to-date understanding on developments in case law which are relevant to exclusion.

**This policy will be reviewed by The Charter Schools Educational Trust annually**

## **Appendix 1: Useful Links to DfE Guidance**

Departmental Advice on Alternative Provision:

<https://www.gov.uk/government/publications/education-for-children-with-health-needs-who-cannot-attend-school>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/942014/alternative\\_provision\\_statutory\\_guidance\\_accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942014/alternative_provision_statutory_guidance_accessible.pdf)

Departmental Advice on Behaviour and Discipline in Schools:

<https://www.gov.uk/government/publications/behaviour-and-discipline-in-schools>

Departmental Advice on Behaviour and Mental Health:

<https://www.gov.uk/government/publications/mental-health-and-behaviour-in-schools--2>

Children with Special Educational Needs and Disabilities: <https://www.gov.uk/children-with-special-educational-needs/overview>

Departmental Advice on attendance: <https://www.gov.uk/government/publications/school-attendance>

Appendix 2 - A summary of the governors' duties to review the Headteacher's decision to exclude

