

### PEOPLE’S SERVICES

**Guidance for**

**Governing Bodies**

**Pupil Discipline Committee**

**Exclusions**

**CONTENTS**

|  |  |  |
| --- | --- | --- |
|  |  | Page No. |
| **1** | Introduction | 3 |
| **2** | The Clerk to the Governors’ Pupil Discipline Committee (PDC) | 3 |
| **3** | The Pupil Discipline Committee (PDC) | 3 |
| **4** | The Headteacher’s duty to inform parents about an exclusion | 4 |
| **5** | Notification of exclusions to the Pupil Discipline Committee (PDC) and LA | 4 |
| **6** | When to arrange a Pupil Discipline Committee (PDC) review hearing | 4 |
| **7** | Before the Review Hearing | 6 |
| **8** | The Review Hearing**8.1** Headteacher**8.2** Parents’ Representative**8.3** Attendance of Excluded Pupil | 6 |
|  | **8.4** Role of LA Officer |  |
|  | **8.5** Stage Management |  |
|  | **8.6** The Order of the Hearing |  |
|  | **8.7** Other considerations |  |
| **9** | Evidence | 8 |
| **10** | The Decision | 8 |
| **11** | After the Hearing | 10 |
| **12** | Minutes of Meeting | 10 |
| **13** | Independent Review Panel | 10 |
|  |  |  |
|  |  |  |

|  |  |  |
| --- | --- | --- |
| **APPENDICES**  |  |  |
| **Appendix A** | Checklist for the Clerk to a Pupil Discipline Committee | 11 |
| **Appendix B** | Clerk’s letter convening the Pupil Discipline Committee | 12 |
| **Appendix C** | Governors’ Pupil Discipline Committee Checklist | 13 |
| **Appendix D** | Sample Agenda for PDC Review Hearing | 15 |
|  |  |  |
|  |  |  |

**1. Introduction**

Exclusion from school is often traumatic for the pupil excluded and his or her parents as well as being an exacting process for Headteachers and Governors.

A decision to exclude a pupil permanently should be taken only:

1. in response to serious breaches of the school's behaviour policy; and
2. if allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.

The decision to exclude is the Headteacher’s and **the purpose of the Governors’ Pupil Discipline Committee (PDC) is to review** that decision. It is important that this is carried out in accordance with all relevant legislation.

This document is intended as a practical guide to PDCs involved in the exclusion review process. It is not exhaustive, governors and clerks are also invited to contact the Managed Transfer and Exclusion Officers on 01744 673377 if they have queries about the process.

**DfE Statutory Guidance**

The Department for Education publishes statutory guidance on exclusions:

 *‘Exclusion from maintained schools, academies and pupil referral units in England’* (September 2017): www.gov.uk/government/publications/school-exclusion

Headteachers, governing bodies of maintained schools (including sixth forms and nurseries that are part of those schools), academy trusts and free schools, pupil referral units, local authorities (LAs) and Independent Review Panels (IRPs) must by law have regard to this statutory guidance when making decisions on exclusions and administering the exclusion procedure.

**2. The Clerk to the Governors’ Pupil Discipline Committee (PDC)**

The Clerk to the Governing Body may also be the Clerk to the PDC but it can be somebody else. Clerking for a PDC is exacting work calling for a detailed knowledge of the exclusion process and the aim of this guidance is to assist with this.

The Clerk is more than just a minute-taker (although full and accurate minutes of the review hearing are very important) the notes of the Clerk to the Governors' PDC may be used as evidence in an independent review hearing. It is also the job of clerks to pupil discipline committees to make sure that the committee keeps within the law and make sure that the correct procedure is followed. They should be clear about the decisions that are taken and the reasons for them.

**3**. **The Pupil Discipline Committee**

The Governing Body must establish a Pupil Discipline Committee (PDC) for the purpose of reviewing certain types of exclusions and to hear representations from parents. **The Headteacher is also entitled to be represented although he or she cannot be a member of the Committee.** (It is quite normal for the Governing Body to state in its standing orders that the PDC will be drawn from members of another non-statutory committee.)

The Committee should consist of at least three governors and the Chair will have the casting vote.

Pupils who are excluded who may miss an examination as a result of the exclusion should have their exclusion considered by the Committee wherever possible before the examination date. Exceptionally in the case of a fixed term exclusion, where it is not practical for the Committee to meet before the date of the public examination, the Chair of the Committee, alone may consider the exclusion and determine whether to reinstate. In such cases the parent has the right to make oral representations to the governing body or, as the case may be, the Chair of the Committee. If possible, the Chair should have the advice of the Clerk and an LA Officer.

**A Governor who has knowledge of the incident that led up to the exclusion should step down from serving on the PDC and also where a Governor has a connection with the pupil which may affect his or her ability to act impartially.** The fact that a Governor has sat on previous PDCs concerning the child or is aware of other incidents does not preclude him/her serving on the PDC.

**4. The Headteacher’s duty to inform parents about an exclusion**

Whenever a headteacher excludes a pupil they must, without delay, notify parents of the period of the exclusion and the reason(s) for it. It can be provided by delivering it directly to parents or posting. Notices can be given electronically if the parents have given written agreement for this kind of notice to be sent this way.

Model letters for use by Headteachers when notifying a parent of their child’s exclusion that include all the prescribed information can be accessed via the Council’s web page: www.sthelens.gov.uk/exclusions

**5. Notification of exclusions to the PDC and the Local Authority**

Normally, the decision to exclude is taken by the Headteacher(in the absence of the Headteacher a deputy or senior teacher should be delegated this authority). Within one school day the Headteacher must inform the PDC and the LA of:

* any permanent exclusion
* exclusions that will result in the pupil being excluded for more than 5 school days or 10 lunch times in any one term (notification is done electronically via data transfer of SIMS attendance files to the LA)
* exclusions that will result in the pupil missing a public examination

For a permanent exclusion, if the pupil lives outside the LA in which the school is located, the Headteacher must also advise the 'home' LA of the exclusion, so that they can make arrangements for the pupil's full-time education from and including the sixth school day of exclusion.

**It is good practice for fixed period exclusions totalling five or fewer school days, or 10 or fewer lunchtimes or half days, in any one term should be reported for monitoring purposes to the PDC.**

**6. When to arrange a PDC review hearing**

The procedure for reviewing exclusions differs according to the extent and nature of the exclusion. The PDC is required to meet to consider the reinstatement of an excluded pupil within 15 school days of receiving notice of the exclusion in the following circumstances:

* the exclusion is permanent;
* a fixed period exclusion that brings the pupil’s total number of days of exclusion to more than 15 in one term; or
* the exclusion would result in a pupil missing a public exam.

For exclusions of more than 5 days but less than 15 governors must convene a meeting to review decision within 50 days of receiving notice of the exclusion, if requested to do so by parent.

For exclusions of 5 days or less in one term the governors must consider any representations made by a parent but are not required to arrange a meeting.



**Note**: the legislation deems a lunchtime exclusion to be a fixed period exclusion equivalent to half a school day. This should be taken into account for the purposes of the above. For example, if a pupil were to be excluded at lunchtime for 15 school days in the same term this would be the equivalent of seven and a half full days and the above would apply.

**Incidents involving police and criminal proceedings**

A school-related incident may sometimes also be the subject of a police investigation which may subsequently result in criminal proceedings. This can mean that the evidence available to Headteachers/teachers in charge is very limited. They may not, for example, be able to hear relevant witnesses or to consider relevant material; it may not be known whether a criminal charge is to be brought; if a charge has been brought, the eventual outcome of any court proceedings may be uncertain.

Where a Headteacher/teacher in-charge excludes a pupil in such circumstances, the PDC has no power to postpone the hearing pending the outcome of the criminal proceedings. The PDC must consider the review within the statutory time limits. Therefore, the PDC will be subject to the same constraints as regards availability of witnesses and other relevant information and will have to consider the case on the same basis as the Headteacher, which includes applying the balance of probabilities standard of proof.

**7. Before the Review Hearing**

The Clerk to agree (within time limits) with governors, parents, Head and LA Officer a convenient date and time for the PDC meeting. Send letter to confirm (Appendix B) along with PDC checklist (Appendix C).

**Write to parent(s) stating date, time and venue, explaining that they can bring a friend, legal representative or interpreter model letter 5 or 6 available on the Council’s web page: www.sthelens.gov.uk/exclusions**

Circulate the relevant information to all those expected to attend the Meeting at least 5 days before (please refer to point 4 Appendix A: **‘**Checklist for the Clerk to a Pupil Discipline Committee’)

**8. The Review Hearing**

**8.1 Headteacher**

The Headteacher should attend the meeting to clarify points and answer any questions relating to the incident or events leading to the exclusion. **No party to the review should be alone with the governors at any point before, during or after the meeting**.

**8.2 Parents’ Representative**

The parent(s) may bring with them to the hearing a friend, legal representative or an interpreter. Where parents are separated or divorced, consideration should be given to whether both parents should be invited. This will normally depend on who has legal residence of the child. In the DfE guidance a parent can include anyone who has parental responsibility for, or care of, the child.

**8.3 Attendance of Excluded Pupil**

If the parent agrees, the governing body should allow and encourage the excluded pupil to attend the meeting and speak (taking into account the pupil’s age and understanding) or consider how the excluded pupil may feed in their views by other means if they cannot attend the Meeting. A pupil aged 18 or over has the right to attend and to make representations in their own right.

**8.4 Role of LA Officer**

The LA Officer is not required (and it’s not practical) to attend all PDC meetings. They will, however, be present at all permanent exclusion meetings including those for academies (where invited). The role of the LA Officer is to advise and not give a view with regard to the merits of the particular exclusion. The PDC may ask the Officer for specific technical advice and advise members to issues where there is a lack of clarity or where more information may be needed or where guidance appears to have been ignored. When considering whether to direct reinstatement the PDC can seek the Officer’s views as to what support could be made available to assist with reintegrating the pupil.

**8.5 Stage Management**

It will usually fall to the Clerk to make the physical arrangements for the hearing and it is best to leave at least half an hour for this before the start; the Clerk should aim to produce a business-like but comfortable environment which will not intimidate those attending. The following is a non-exhaustive list of points to bear in mind:

* although the hearing will normally take place in the school, in difficult cases a neutral venue might be considered
* the room in which the hearing takes place should be private and big enough to hold all those attending comfortably.
* seating can be informal but the members of the PDC should be grouped together.
* it is helpful if all parties have a table available to allow them to place their papers and make notes.
* there should be a separate room in which participants other than the PDC members can gather before the hearing. Those attending, other than the PDC members, should be directed to assemble here.
* Parent(s) and the Headteacher should come in together and on no account should the Headteacher be seen chatting informally with members of the PDC prior to the meeting. Nor should any party be left in the room with the PDC without the other party including the LA officer.
* Water and glasses should be provided as should a box of tissues - exclusion hearings can be emotional events!
* The Clerk should bring to the meeting all paperwork, statements, written representations, a copy of the school’s Behaviour and Discipline Policy, this Guide together with a copy of the DfE guidance, as well as plenty of paper and writing materials.

**8.6 The Order of the Hearing**

A sample agenda detailing the order for the Meeting is attached at Appendix D and should be included with model letter 5 or 6 to parent.

**8.7 Other considerations**

* Parents should be put at ease as far as possible.
* Questions should be fair, balanced and not leading.
* The Chair should help parents who appear to be having difficulty understanding information.
* Sufficient time must be allowed for each party to put their case.

**9. Evidence**

Where the case for the exclusion rests mainly on physical evidence, and where the facts are in dispute, then the physical evidence, if practicable, should be retained and be available to the PDC. Photographs or signed witness statements are acceptable if there are difficulties in retaining the physical evidence.

New evidence about the events that lead to the exclusion can be put forward by any party. However the school **may not introduce new reasons** for the exclusion.

With regard to video evidence it should be watched by both the parent and the governors without commentary in the hearing. This means that everyone watching should come to their own decision about what it is they are seeing, rather than being told what it is they are seeing. It may be necessary, however, for the Head to identify the pupil at the start of the video if they are with a group of pupils.

To reach a decision, the PDC will generally need to hear from those directly or indirectly involved. The PDC may wish to call witnesses who saw the incident that gave rise to the exclusion. These may include any alleged victim or any teacher other than the Headteacher who investigated the incident and interviewed the pupil. In the case of witnesses who are pupils at the school it will normally be more appropriate for the PDC to rely on written statements. Pupils may appear as witnesses if they do so voluntarily and with their parents’ consent. The PDC should be sensitive to the needs of the child witnesses to ensure that the child’s view is properly heard.

All written witness statements must be attributed and signed, unless the school has good reason to wish to protect the anonymity of pupils. The general principle remains that an accused person is entitled to know the substance and the source of the accusation. If by making the statement anonymous the accused cannot answer the allegation then the statement should be withdrawn. The PDC must consider what weight to attach to written statements whether made by adults or pupils as against oral evidence. They should bear in mind that a written statement may not encompass all the relevant issues nor can the author be interrogated.

The calling of character witnesses is at the discretion of the PDC, but should be allowed unless there is good reason to refuse.

It is for the PDC to decide whether any witness should stay for the whole or rest of the hearing, but they should not be present before giving evidence.

Other documentation before the PDC should include the Behaviour and Disciplinary Policy and any other relevant documentation relating to the child (eg: Behaviour Log/Record Pastoral Support Programme).

**10. The Decision**

**The role of the PDC is to review the Headteacher’s decision to exclude**. The PDC cannot increase the severity of the exclusion. There are only two decisions open to the PDC — to uphold the exclusion or to direct the pupil's reinstatement, either immediately or by a particular date.

The Committee should address the following questions:

1. On a balance of probabilities, did the pupil carry out what he or she is alleged to have done?
2. Did the Headteacher comply with the law and have regard to the guidance in deciding to exclude the pupil?
3. Did the Headteacher have regard to the school’s/PRU’s published policies? E.g. behaviour policy, equal opportunities policy, anti-bullying policy, SEN policy and race and disability equality policies; and
4. Was the exclusion a fair and proportionate sanction?

In relation to the first question, if there is any dispute over what has happened, the test is whether the incident happened ‘on a balance of probabilities’ i.e. that it was more than 50% probable than not that the event happened. The more serious the allegation, the more convincing the evidence substantiating the allegation needs to be.

When making its decision the PDC may wish to have regard to the various factors set out in the check list at Annex C.

In answering the fourth question consideration should be given to:

* Mitigation
* Prior action by the school
* Alternative solutions
* Pastoral Support Programme
* Whether procedures for exclusion have been followed

**The Equality Act**

The school has certain duties under the Equality Act 2010. The Equality Act reiterates that discrimination is unlawful. In the context of exclusion the school has a duty not to discriminate against pupils on the following grounds:

|  |  |  |  |
| --- | --- | --- | --- |
| Sex | Sexual Orientation | Disability | Gender Reassignment |
| Race | Pregnancy/Maternity | Religion or Belief |  |

Important questions to ask are whether the pupil has a Special Educational Need or disability – this may take many forms but one obvious example is where the pupil has behavioural difficulties. This may mean that they have more difficulty in complying with school rules than pupils who do not have a behaviour learning difficulty. Where a pupil has SEN, and where it is relevant to the exclusion, is there evidence that the school has made reasonable adjustments.

Where reinstatement is practical the PDC should decide whether to direct reinstatement having considered:

* Any representations made by the parent, the pupil and the LA officer.
* Whether the Headteacher has complied with the exclusion procedure and has had regard to the DfE guidance before deciding to exclude the pupil.

Where reinstatement is not practical, because, for example, the pupil has returned to school following the expiry of a fixed period exclusion, or because the parent makes it clear that he or she does not want their child reinstated, the PDC committee must consider whether the Headteacher's/teacher in charge's decision to exclude the child was justified, based on the evidence. The outcome of its review should be added to the pupil's school record for future reference.

**11. After the Hearing**

Once the decision to either uphold the exclusion or reinstate the pupil has been made the Clerk records the Committee’s decision. **The Clerk must notify the parent and the LA by letter within 1 school day of the decision giving the Committee’s reasons. Model letters 7, 8 and 9 containing the prescribed information can be accessed via the Council’s website: www.sthelens.gov.uk/exclusions.** Where the pupil resides in a different LA from the one that maintains the school/PRU, the PDC must also inform that LA — the pupil's 'home' LA.

A copy of the PDC’s decision letter should normally be placed on the pupil's school record with copies of relevant papers. In deciding how long to retain school records schools must comply with Freedom of Information and data protection legislation.

**12. Minutes of Meeting**

Minutes of meetings to consider exclusions should be kept confidential and stored as such. Minutes must be signed as an accurate record by the Chair of the PDC who heard the case.

Copies of minutes of the meeting should be sent to the Headteacher, the Chair of the PDC and the LA. They are not normally provided to the parent at this stage.

Paragraph 69 of DfE guidance 2017 states ―The governing body should ensure that clear minutes are taken of the meeting as a record of evidence that was considered by the governing body. These minutes should be made available to all parties on request.

**13. The Independent Review Panel**

The parent(s) have the right to appeal against the Committee’s decision to an Independent Review Panel, convened by the Council’s Legal Services. The appeal must be lodged within 15 school days of the Committee’s decision being communicated to the parent.

An Independent Review Panel may:

* uphold the governing body’s decision;
* recommend that the governing bodyreconsiders reinstatement; or
* quash the decision and direct that the governing body reconsiders reinstatement.

**Appendix A**

**Checklist for the Clerk to a Pupil Discipline Committee**

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| **Before the hearing** | **Date** **Completed** |
| 1. Receive notification of exclusion and PDC membership from Headteacher  |  |
| 2. Agree, (within time limits) with Governors, school, parents and LA Officer a convenient date and time for the PDC meeting.  |  |
| 3. Write to parent(s) stating date, time and venue, explaining that they can bring a friend, legal representative or interpreter (model letter 5 & 6 [www.sthelens.gov.uk/exclusions](http://www.sthelens.gov.uk/exclusions)) and attach agenda (Appendix D)  |  |
| 4. The relevant parties must provide the following information to the clerk at least 5 days before the meeting: * The reason for the exclusion (Headteacher)
* Brief details of previous behaviour record (Headteacher)
* Any support given to the pupil [e.g. Pastoral Support Prog/Individual Education Plan] (Headteacher)
* Any written representations from the parents (Parents)
* Any written representations from the LA (LA Officer)
* A list of those attending
* A copy of School Behaviour Policy (Headteacher).
 |  |
| 5. Circulate the information to be used in the meeting to all those expected to attend, i.e. members of PDC, Headteacher, parents, LA Officer at least 5 days.  |  |
| 6. Set up room (see paragraph 8.3).  |  |
| 7. Meet with PDC prior to the meeting. Acquaint the committee with the protocol. Ensure a Chairperson is appointed and advise on procedures for the meeting (see paragraph 8.4).  |  |
| 8. Invite Headteacher, LA Officer and parents into the meeting **TOGETHER**.  |  |
| 9. Ask for mobiles to be switched off/silenced.  |  |
| **During the hearing**  |  |
| 1. Introduce all parties.  |  |
| 2. Hand over to the Chair who will explain the purpose and order of the hearing (see paragraph 8.2)  |  |
| 3. Take minutes of the meeting. Ensure that the reasons for the Committee’s decision are recorded.  |  |
| **After the hearing**  |  |
| 1. Record the decision of the Committee.  |  |
| 2. Notify the parent(s) and LA **within 1 school day** of the decision giving reasons.  |  |
| 3. If the decision of the PDC is to reinstate send a copy of model letter 9 to parent and LA. |  |
| 4. If the exclusion is permanent send a copy of model letter 8.  |  |

**Appendix B**

**Clerk’s letter convening the Pupil Discipline Committee**

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| *19 June 2018* Dear Governor **Governing Body’s Pupil Discipline Committee: Exclusion Review Hearing** The Governing Body’s Pupil Discipline Committee (PDC), of which you have agreed to be a member, will meet to review the Permanent Exclusion of *Forename Surname* from *St Helens’ Primary School* at the school on *Wednesday 19 June at 6:30 pm*. I will act as Clerk and the members of the committee will be: *Mr John Baptiste* *Ms Joan d’Arc* *Rev Thomas A Becket*It is particularly important for legal reasons that the hearing takes place at the advertised time and that three governors compose the committee so please would you contact me to confirm your availability. It will be necessary to elect a Chair and I will be calling for a volunteer or nomination at the start of the hearing so would you please consider whether you would be willing to stand for this office. I attach a copy of the letter sent from the school to *Forename’s* parents, the school’s Behaviour and Discipline Policy and a check list for the PDC. The check list is by no means mandatory but offers a convenient guide to the kind of questions which need to be asked. If you have any queries about this matter please don’t hesitate to contact me on *01744 123456* Yours sincerely *Mary Shelley* Clerk to the Governing Body’s Pupil Discipline Committee |

**Appendix C**

**Governors’ Pupil Discipline Committee Checklist**

(for Clerk to circulate to PDC members)

|  |  |  |  |
| --- | --- | --- | --- |
| **Name of pupil** |  | **Date of hearing** |  |
| **Governors** |  | **Chair** |  |

|  |
| --- |
| **Lawful****legally sound – exclusion procedures followed including informing parents, witness statements as well as any broader legal considerations, Child Protection, SEN Code of Practice, Equalities Act etc** |
| Questions to ask | EvidenceDid the Headteacher inform parents in writing and give a clear reason for the exclusion? If the pupil has an EHCP has the School reviewed the Plan in light of the child’s deteriorating behaviour? Has there been consultation with relevant support services e.g. SEND Team, Educational Psychology Service?Does the offence represent a serious breach of the school behaviour policy? Have school followed their behaviour policy? Have parents and pupil been informed about this policy and any other relevant policies (e.g. home to school agreement)?  |
| **Rational** **time taken to consider the evidence and advice sought from any relevant professionals before decision made to exclude. Pupil given the opportunity to express their view** |
| Questions to ask | EvidenceWas the pupil interviewed by the Headteacher and given an opportunity to give his/her account of what happened? Was a thorough investigation carried out before the decision to exclude was taken? Did the pupil commit the alleged offence? (Balance of probability not necessarily beyond reasonable doubt.)  |

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| **Reasonable** **based on expectations or demands within the realms of what is possible and achievable for that pupil. Alternatives considered and support provided to reduce the risk where appropriate**  |
| Questions to ask | EvidenceWhat strategies have been tried prior to exclusion e.g. PSP, IEP? In particular is the pupil ‘Looked After’ or have SEN and has the school made all reasonable adjustments to support the pupil?Is there clear evidence of the behaviour in question occurring over a period time Is there a strong likelihood of a recurrence? Would the pupil remaining in the school seriously harm the education or welfare of others? |
| **Fair****that any extenuating circumstances were considered as well as any differences in response to other pupil in the same or similar situation - not biased** |
| Questions to ask | EvidenceWere other pupils involved and, if so, did they receive the same punishment? Did the headteacher take into account any extenuating circumstances e.g. pupil being bullied?  |
| **Proportionate** **why permanent rather than fixed period exclusion was appropriate.** |
| Questions to ask | EvidenceIs the punishment proportionate to the offence? |

**Appendix D**

**Pupil Discipline Committee Meeting**

***Date***

***Time***

***Venue***

**to consider Headteacher’s decision to exclude**

***Pupil’s Name***

Headteacher, parents, parents’ friend/representative, pupil (where appropriate), Managed Transfers and Exclusions Officer enter the room together.

1. Chair makes introductions and explains the procedure.
2. Headteacher presents case for exclusion.
3. Questions to headteacher about the case presented by governors, parents and pupil.
4. Parents/pupil give their views about the exclusion.
5. Questions to parents and pupil by governors and headteacher.
6. Local Authority representative invited to comment.
7. Questions to Local Authority representative by all.

Once there are no further questions or comments from governors, parents and Headteacher:

1. Headteacher invited to sum up.
2. Parents invited to sum up.
3. Chair advises the meeting about how the decision will be communicated to all.
4. Headteacher, parents, parents’ friend or representative, pupil, Local Authority representative leave the room together.
5. Governors make their decision – the Clerk stays in order to advise on guidance and procedures.