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Royal Greenwich Trust School  
Exclusion Policy  
DRAFT COPY  
Review December 2018

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| <b>Date of Last Review:</b>        |               |
| <b>Date agreed by Governors:</b>   |               |
|                                    |               |
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| <b>Date of next review:</b>        | December 2018 |

## **EXCLUSION POLICY**

### **Introduction**

Royal Greenwich Trust School follows current Department for Education (DFE) guidance in relation to exclusions, "Exclusions from maintained schools, academies and pupil referral units in England" published in June 2012.

Royal Greenwich Trust School has a Behaviour for Learning Policy in place that promotes self-regulatory behaviour. This policy is widely publicised so that students, parents and school staff are aware of the standards of behaviour expected and the range of sanctions.

Exclusion (either for a fixed period or permanent) is recognised as an appropriate sanction but it will usually only be used as a last resort when a range of other strategies have been exhausted. Most exclusions are the result of persistent breaches of the School's Behaviour for Learning policy. However, a permanent exclusion can happen for a one off offence if a student has committed a serious breach of the School's Behaviour for Learning policy.

The Head teacher, Governing body, Independent Review Panel (IRP) members and clerks must by law have regard to the DFE guidance when deciding:

- Whether to exclude a student
- Whether to uphold an exclusion
- Whether to recommend or direct that the Governing body considers the exclusion again

### **Definitions used in the Policy**

Use of term 'parent' within this policy:

In addition to the child's birth parents, references to parents in the policy include any person who has parental responsibility (which includes the local authority where it has a care order in respect of the child) and any person (for example, a foster carer) with whom the child lives.

## **Education off site**

The school has the power to direct a student off site for a specifically devised educational provision. A student can also transfer to another school as part of a managed move with the consent of their parents.

## **Three types of exclusion**

### ***Internal Exclusions***

The school uses internal exclusion as an internal process when the objective is to remove the student from mainstream lessons, not from the school site, for disciplinary reasons.

### ***Fixed term exclusion***

This is an exclusion for a fixed number of days. The student must remain at home up to the first 5 days during which time the schools should take reasonable steps to set and mark work for the student. For a fixed term exclusion of more than 5 days, full time education provision commences from the 6<sup>th</sup> day and must be organised by the school with the help of relevant Local Authority. A student may not be excluded for more than 45 days in a school year.

### ***Permanent Exclusion***

The Head teacher may decide to permanently exclude a student if:

The student has committed a serious breach or persistent breaches of the School's Behaviour for Learning Policy; and

Allowing them to remain in the school seriously harms the learning or welfare of the student or others in the Academy.

Examples of misconduct that might be considered as a serious breach are:

- Unauthorised use of or supply of alcohol or drugs
- Suspicion of being associated with a gang (including gang related offences/activities or criminal activities)
- Carrying a weapon on to the school site, or on the way to or from school
- Asking someone else to hold a weapon or hide it

- Stealing from Royal Greenwich Trust School, employees of Royal Greenwich Trust School, or from students and other serious and deliberate offences of dishonesty
- Intentional damage to property
- A serious breach of safety requirements likely to endanger other people or the student, or to cause damage to School's property
- Abuse of the School's computer system and of the internet and non-compliance with any policy issued by the school addressing these matters
- Sexual misconduct, abuse or assault on site or out of school
- Serious actual or threatened violence, physical assault or fighting
- Bullying and/or harassment including racial, sexual or homophobic harassment
- Wilful defiance of the properly exercised authority of the school and its staff
- Bringing the school into disrepute or acting in a manner deliberately to undermine the School's values or ethos
- Persistent disruptive behaviour which detracts the learning of others
- Student has taken part in behaviour which brings the school into disrepute away from the school

### **The Head teacher's power to exclude**

Only The Head teacher, (or, in their absence, the Deputy Head) can exclude a student. The Head teacher may consult others but not anyone who may later have a role in reviewing The Head teacher's decision.

The Head teacher should ensure that a thorough investigation has been carried out and allow students to present their case before taking the decision to exclude. Establishing the facts is to be decided on the balance of probabilities.

The Head teacher should take account of any contributing factors that are identified after an incident of poor behaviour has occurred, for example, where it comes to light that a student has suffered bereavement or has been subject to bullying.

Early intervention to address causes of disruptive behaviour should include an assessment of whether appropriate provision is in place to support any Special Educational Needs (SEN) or disability that a student

may have. The Head teacher should also consider the use of a multi-agency assessment for students who demonstrate persistent disruptive behaviour.

### **Fixed Term or Permanent**

A student may be excluded for one or more fixed periods or permanently. In some cases a full investigation may not be immediately possible if, for example, a number of witness statements are required. In this case The Head teacher may issue a fixed term exclusion for a short period to allow the investigation to take place and to give the opportunity for a reasoned decision.

In this case the letter informing parents of the fixed term exclusion should clearly state 'that subject to investigation, the fixed term exclusion may lead to a permanent exclusion'. Once the investigation is complete, a further letter should be sent containing one of the following:

- Notification for the student to return to the school following a parental reintegration meeting
- An extension of the fixed term exclusion
- Notification of a permanent exclusion

In exceptional cases, usually where further evidence, not available at the time of the investigation, has come to light a fixed term exclusion may be extended or converted to a permanent exclusion. Alternatively, The Head teacher may choose to withdraw an exclusion in the light of new evidence.

### **Students from vulnerable groups**

#### ***Students with SEN***

The school has a statutory duty to do its best to avoid excluding permanently any student with a statement of SEN or EHCP. Where a student has a statement of SEN or EHCP and is at risk of exclusion, the school should consider an emergency review.

#### ***Disabled Students***

The school has a legal duty under the Equality Act 2012 not to discriminate against disabled students by excluding them from school because of their disability.

#### ***Looked After Children***

Looked After Children are at risk of low attainment and exclusion therefore the school should try every practicable means to avoid their exclusion.

### **Behaviour outside the school**

The Head teacher may exclude students even if the circumstances giving rise to exclusion occur when the student is out of school.

### **Equality Duty**

The school has to comply with the public sector equality duty (in the exercise of its functions, it must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010). The school must advance equality of opportunity and good relations between people of different groups (for example, different races). The school must also assess the impact of its policies and monitor the operation of those policies on students, parents and staff in the context of the public sector equality duty.

### **Police Involvement and Parallel Criminal Proceedings**

The process of exclusion from the school and criminal proceedings should run parallel. However, in certain circumstances it may be appropriate for a decision to permanently exclude to be postponed if a police investigation has not been concluded. In such circumstances, an extended fixed term exclusion should be used. However, the DFE Guidance says that, *'Head teachers need not postpone taking a decision solely because a police investigation is underway and/or any criminal proceedings may be brought. In such circumstances, Head teachers will need to take a decision on the evidence available to them at the time'*. The decision should be *'fair'*.

### **Responsibilities of The Head teacher**

The Head teacher should follow the procedures set out in the DFE Exclusion Guidance.

#### *Informing parents*

Once a decision to exclude has been reached, the parent must be notified without delay, ideally by telephone, followed up with a letter preferably within one school day. There are specific requirements for what should be stated in the letter set out in the Local Authority guidance. It is important to ensure reasons for the exclusion are stated clearly in the letter; the period of a fixed exclusion or if it's permanent;

and parents' rights to make representations to the Governing body.

### *Informing Governors and the Local Authority (LA)*

The Head teacher must without delay inform the Governing body and Local Authority of:

- All permanent exclusions (if the student resides in another authority, the home Local Authority should also be informed).
- Exclusions that would take the term's total for that student to more than five days
- Exclusions that would result in the student missing a public examination or national curriculum test. Students who have been permanently excluded should not be removed from the school roll until the Independent Review Panel process is completed.

### **Educational provision for excluded students**

In all cases of exclusion, work should be sent by the school from day one and marked. Where a student is given a fixed term exclusion of six school days or longer, the school with Local Authority must arrange full time educational provision from and including the sixth day of exclusion. During the initial period of up to five school days, the parents are responsible for the child and must ensure that they are not present in a public place during normal Academy hours without reasonable justification.

### **Governing body meetings**

If a meeting of the Governing body is to be held, The Head teacher should prepare all supporting papers for the exclusion and pass them to the Clerk for circulation to all parties at least five days in advance of the meeting. The paperwork should include:

- The Head teacher's case for exclusion
- A copy of the exclusion letter of notification to the parents
- Witness statements
- Excluded student's statement

- Behaviour for Learning policy and other relevant policies
- Details of any pastoral support
- Records of interventions

A Governing Body considering a Principal's decision to permanently exclude a student who is involved in a criminal investigation/proceedings cannot postpone their meeting and must decide whether or not to reinstate the student on the evidence available (DFE Guidance p 31 S12/172).

### **Role of Governing Body**

The Governing body must consider any representations about an exclusion made by the parents of the excluded student. The Governing body usually delegates its functions in respect of exclusions to a committee consisting of at least three governors (such as 6 Royal Greenwich Trust School | Exclusions Policy - Non statutory policy committee may be called GDC-the Governors' Disciplinary Committee). GDC which meets to consider any exclusion must be made up of members, none of whom have any connection with the student or incident that would affect their ability to act impartially.

GDC can either uphold an exclusion, or direct reinstatement immediately or by a particular date.

GDC cannot extend a fixed term exclusion nor substitute it with a permanent exclusion.

GDC has a duty to meet within 15 school days of receiving notice of the exclusion if:

- The exclusion is permanent
- It is a fixed term exclusion which would bring the student's total number of school days of exclusion to more than 15 in a term
- It would result in a student missing a public examination Where a student is excluded from the school for a fixed period of more than 5 but not more than 15 school days in a single term, and if requested to do so by the parents, DGC must meet and consider the reinstatement



of an excluded student within 50 school days of receiving notice of the exclusion. In the case of one or more fixed term exclusions totalling 5 days or less in a school term, GDC must consider any written representations from the parents but cannot direct reinstatement in this case.

### **Role of the Clerk to GDC**

GDC may appoint a Clerk who must not be a member of the Governing body.

When The Head teacher notifies the Clerk that they have excluded a student for more than five days, the Clerk should:

- Set up a meeting of GDC within the timescales and formally invite the parents and The Head teacher to the meeting at a time and place convenient to all parties. The parent can be accompanied by a friend or legal representative at their request. A parent may also invite a Local Authority representative to attend the meeting as an observer but representations can only be made by the Local Authority with the consent of the Governing body. The student is also entitled to attend the meeting, and should be encouraged to participate, taking into account their age and understanding
- Obtain written information/ statements and circulate to all parties at least five days in advance of the meeting, along with a list of those who will be attending and a copy of the procedure for the meeting
- Invite all parties to the meeting at the same time
- Prepare a written record of the meeting
- Record GDC's decision and reasons for it

### **Procedure for the Governors' Disciplinary Committee (GDC)**

The Chair should explain the purpose of the meeting, which will be to hear any representations and for DGC to consider whether or not to uphold the exclusion. The Chair should go through the procedure for the meeting:

### **Decision**

GDC must decide whether the exclusion was lawful, reasonable and procedurally fair. At the meeting, the Committee should consider:

- Any representations made by the parent and the student
- Whether The Head teacher has complied with the exclusion procedure and has had regard to the DFE guidance
- On the balance of probabilities, has the student done what they are accused of
- Whether allowing the student to remain at the school seriously harms the learning or welfare of the student or others in the school
- Whether the behaviour is a serious breach or amounts to persistent breaches of the School's Behaviour for Learning policy
- In most cases, whether a wide range of possible strategies to improve the student's behaviour were tried and have failed The Committee must inform the parent, Principal and the Local Authority of their decision, in writing without delay, preferably within one school day of the meeting, stating their reasons. Royal Greenwich Trust School | Exclusions Policy - Non statutory policy
- The Head teacher will be invited to explain what has happened to lead to their decision to exclude the student and summarise their reasons for it
- The parents/representatives will be given the opportunity to ask questions of The Head teacher
- GDC will be given the opportunity to ask questions of The Head teacher
- The parents/representatives will be invited to present their views concerning the exclusion
- The Head teacher will be given the opportunity to ask questions
- GDC will be given the opportunity to ask questions
- Summary by The Head teacher and parents of the case for exclusion
- The Committee will make their decision and record their reasons for their decision

If the Committee directs reinstatement, this should take place as soon as possible. No conditions can be attached to any direction to reinstate the student except that the Committee can direct reinstatement on a particular date.

Where the Committee upholds a permanent exclusion, there are specific requirements for what information should be included in the letter to the parents set out in the DFE guidance.

A note of the Committee's decision should be placed on the student's school record.

### **Independent Review Panels (IRP)**

The school must have an IRP to review permanent exclusions if requested by the parents of the excluded student and/or the student is over 18.

Parents must apply for an IRP within 15 school days of notice being given by the GDC of their decision to uphold a permanent exclusion.

An IRP must meet to consider an exclusion no later than 15 school days after the day on which the request for the review was received. If necessary, the panel may then decide to adjourn the hearing.

### **Composition of IRP**

The IRP must consist of 3 or 5 members. One must be a lay member (who can be an ex-governor), one must be a head teacher or someone who was one within the last 5 years (two head teachers for panels of 5), and one must be a governor who has served for 12 consecutive months in the last 5 years (two for panels of 5).

### **Role of the Clerk to the IRP**

The Clerk provides an independent source of advice on procedures for all parties.

In advance of the IRP, the Clerk must take reasonable steps to find out when the parent and others entitled to attend the hearing would be available in order to ensure that all parties are able to attend. They must also arrange a suitable venue for hearing the IRP.

The following are entitled to make written representations, appear and make oral representations, and to be represented (including legally):

- The parent (or, if aged over 18, the student)
- The Head teacher

- The Governing body

The Clerk should circulate all written evidence to all parties at least 5 school working days before the hearing.

If requested by the parents, the school must appoint a Special Educational Needs (SEN) Expert to attend the hearing. Parents have a right to this, regardless of whether their child has recognised or identified SEN. The SEN Expert's role is to provide impartial advice to the IRP on how special educational needs may be relevant to the exclusion. This includes whether the School's policies in relation to SEN were legally reasonable and procedurally fair, whether the school acted in a legal, reasonable and procedurally fair way with regards to identification of SEN and any contribution that this could have made to the circumstances of the student's exclusion.

### **Conduct and role of the IRP**

It is for the IRP to decide how to conduct the proceedings. The role of the IRP is to review GDC's decision not to reinstate the permanently excluded student. The IRP must take account of the circumstances of the excluded student and all others in the Academy. The IRP must apply the civil standard of proof (the balance of probabilities).

**Reaching a decision** Information on what the panel should consider when coming to their decision can be found in the DFE Guidance. An IRP can decide to:

- Uphold the exclusion decision
- Recommend that the Governing body reconsiders their decision
- Quash the decision and direct that the Governing body considers the exclusion again

The IRP's decision can be decided by a majority vote. The IRP can request that a copy of the decision letter is placed on the pupil's record and the school must comply with this request. The IRP may only quash a decision and direct reconsideration where it considers that the exclusion was flawed when considered in the light of the principles applicable on an application for judicial review: illegality, irrationality and procedural impropriety.

- **Illegality** – did The Head teacher and/or Governors act outside the scope of their legal powers in taking the decision to exclude?

- **Irrationality** – was the decision of the Governors not to reinstate the student so unreasonable that it was not one a reasonable person could have made?

- **Procedural Impropriety** – was the process of exclusion and the Governors’ consideration so unfair or flawed that justice was clearly not done? Royal Greenwich Trust School | Exclusions Policy - Non statutory policy

Procedural Impropriety means not simply a breach of minor points of procedure but something that has a significant impact on the quality of the decision making process. The DFE Guidance gives the following examples:

- Bias
- Failing to notify parents of their right to make representations
- Failing to give reasons for a decision
- Being a judge in your own case e.g. if The Head teacher who took the decision to exclude were also to vote on whether to uphold the exclusion

For other breaches of procedure, the IRP may recommend that the Governing body reconsiders its decision.

Where Criminal Proceedings are in progress when a case goes to Independent Review Panel the DFE Guidance P31 S12/173 applies: The fact that parallel criminal proceedings are in progress should also not directly determine whether an independent review panel should be adjourned. Relevant factors for the panel to consider will include:

- Whether any charge has been brought against the student and, if so, what the charge is
- Whether relevant witnesses and documents are available
- The likelihood of delay if the hearing were adjourned and the effect it may have on the excluded student, the parents, any victim or the school
- Whether an adjournment or declining to adjourn, might result in injustice Where a panel decides to adjourn, the clerk (or local authority / Academy Trust where a clerk is not appointed) will be responsible for monitoring the progress of any police investigation and / or criminal proceedings, as well as for reconvening the panel at the earliest opportunity. If necessary the panel may adjourn more than once (in line with the requirements in paragraph 140).

## **Financial Penalties**

Where an IRP directs a Governing body to reconsider an exclusion it has the power to order that a readjustment of the school budget be made if the Governing body does not offer to reinstate that student within 10 school days of receiving notification. The sum of this adjustment must be £4000, payable within 28 days, and will be in addition to other monies that follow permanently excluded students.

## **Reconvening a Governors' Disciplinary Committee**

If the IRP directs or recommends that the Governing body reconsider the exclusion, the Governing body must meet to reconsider within 10 school days of notification. Where a Governing body has reconsidered an exclusion decision it must inform The Head teacher and the Local Authority of its reconsidered decision and the reasons for it without delay.

## **After the IRP**

The IRP's decision is binding on the parent, the Governing body and The Head teacher. The IRP cannot revisit its decision once made.

The IRP must let all parties know its decision without delay. The decision letter should give the IRP's reasons for its decision in sufficient detail for the parties to understand why the decision was made.

If the IRP upholds the permanent exclusion, the Clerk should immediately report to the Local Authority. If the student is of compulsory school age, it is for the Local Authority in whose area the student lives to make arrangements as quickly as possible for the student to continue in suitable full-time education. If the student lives outside the area of the Local Authority, the Clerk should make sure that the home local authority is also informed immediately of the position.

## **Remedies after the IRP Secretary of State**

Parents can complain to the Secretary of State via the Education Funding Agency at the DFE.

## **Judicial review**

Decisions of the IRP can be subject to judicial review.

## **Claims of Discrimination in relation to exclusion**

Parents can also apply to the First-tier tribunal to hear cases of alleged disability discrimination, in addition to their right to apply to a County Court to hear other cases of discrimination under the Equality Act 2010. The First-tier Tribunal will be able to direct reinstatement.