Exclusions and Suspension Policy

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1. Introduction

1.1 The Department for Education (DfE) document titled 'Suspension and Permanent Exclusion from Maintained Schools, Academies and Pupil Referral Units in England, including pupil movement' provides statutory guidance on the legislation governing the suspension and permanent exclusion of pupils from maintained schools, academies, free schools, alternative provision academies/free schools, and pupil referral units in England. This guidance applies from 1 September 2023.

1.2 It also provides statutory guidance to which Headteachers, governing bodies, Local Authorities, Academy/Free School Trusts, independent review panel members, independent review panel clerks and special educational needs experts must have regard when carrying out their functions in relation to suspensions.

1.3 The suspension regulations give clarity and certainty to schools, local authorities, Academy/Free School Trusts and review panels, in terms of how they discharge their obligations to parents. Obligations are to the "relevant person" – a parent or the student, who is 18 or over. This guidance refers to "parents" throughout and where practicable it is expected that all those with parental responsibility should be engaged with the suspensions process.

1.4 The legislation to which this policy relates is:

- the Education Act 2002, as amended by the Education Act 2011;
- the School Discipline (student suspensions and Reviews) (England) Regulations 2012;
- the Education and Inspections Act 2006;
- the Education Act 1996; and 7
- the Education (Provision of Full-Time Education for suspended students) (England) Regulations 2007, as amended by the Education (Provision of Full-Time Education for suspended students) (England) (Amendment) Regulations 2014.

1.5 A Guide to the Law regarding suspensions and appeals is attached as Appendix 1.

2. Definition of a Parent (The definition of a parent can be found in the Education Act 1996)
2.1 The definition of a parent for the purposes of this policy includes 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.

2.2 **Definition of the term Suspend**
Use of the term suspend in this guidance is a reference to what is described in the legislation as a suspension for a fixed period

3. Key Points in this Policy
3.1 Good discipline in academies is essential to ensure that all students can benefit from the opportunities provided by education. The Government supports Headteachers in using suspension as a sanction where it is warranted. However, Stone Soup Academy believes permanent exclusion should only be used as a last resort, in response to serious or persistent breaches of the academy's behaviour policy, and where allowing the student to remain in the academy would seriously harm the education or welfare of the student or others in the academy.

3.2 At Stone Soup Academy we have 6 Key Principles of:

- High Expectations
- Respect
- Individual Learning
- A different approach
- Preparation for independent living
- Personal development

3.3 As such, we also measure our contribution via the following outcomes for our students:

- Improved sense of direction, self-esteem and confidence
  - Better attendance once at Stone Soup
  - Reductions in disruptive behaviour, suspensions and referrals
  - Better academic attainment and more students achieving awards for their performance
  - Positive progression routes and reduction of those not in employment, education and training (NEET)
  - Improved relationship development and sustainability (with family, school and peers)

3.4 At Stone Soup Academy we also have a clear and innovative behaviour system and associated policy. ***This policy should be read alongside our Behaviour Policy.***

3.5 The academy's decision to suspend a student will be lawful, reasonable and fair. Academies have a statutory duty not to discriminate against students on the basis of certain characteristics, such as disability or race. Stone Soup Academy will give particular consideration to the fair treatment of students from groups who are vulnerable to suspension.

3.6 Disruptive behaviour can be an indication of unmet needs. Where the academy has concerns about a student's behaviour, we will try to identify whether there are any causal factors and intervene early in order to reduce the need for a subsequent suspension. In this situation we will give consideration to a multi-agency assessment that goes beyond the student's educational needs.

3.7 Stone Soup Academy will have a strategy for reintegrating students that return to the academy following a fixed period suspension, and for managing their future behaviour.

3.8 All children have a right to an education and the school will **take reasonable steps to set and mark work for students during the first five school days of suspension, and alternative provision will be arranged from the sixth day.**

3.9 Where parents (or the suspended student, if aged 18 or over) dispute the decision of the Governing Body not to reinstate a permanently suspended student, they can ask for this decision to be reviewed by an independent review panel.

3.10 Where there is an allegation of discrimination (under the Equality Act 2010) in relation to a fixed-period or permanent exclusion, parents can also make a claim to the First-tier Tribunal (for disability discrimination) or a County Court (for other forms of discrimination).

3.11 An independent review panel ***does not have the power*** to direct the Governing Body to

reinstate a suspended student. However, where a panel decides that a Governing Body's decision is flawed when considered in the light of the principles applicable on an application for judicial review, it can direct the Governing Body to reconsider its decision.

3.12 In line with the DfE guidance, whether or not Stone Soup Academy has decided that a student has special educational needs (SEN), all parents (or students if aged 18 or over) have the right to request the presence of a SEN expert at an independent review panel. The SEN expert's role is to provide impartial advice to the panel about how SEN could be relevant to the suspension; for example, whether the academy has acted reasonably in relation to its legal duties when excluding the student.

3.13 Suspended students will be enabled and encouraged to participate at all stages of the suspension process, taking into account their age and understanding.

4. What the Headteacher will consider before a decision to suspend is made

4.1 When a student, or group of students, does not follow the academy's behaviour policy, staff will respond immediately and consistently. The behaviour will be addressed through our staged system of support and consequences, beginning with a reminder of expectations and restorative discussion. If the behaviour continues or is more serious, further actions may include removal from the learning environment, contact with parents/carers, and a short fixed-period suspension. Repeated or significant breaches may lead to additional sanctions in line with our Behaviour and Suspension Policies. All decisions will take account of individual needs, including SEND, and will always prioritise the safety and wellbeing of all students and staff.

4.2 A decision to suspend a student permanently will only be taken

- In response to serious or persistent breaches of Stone Soup Academy's behaviour policy
- Where allowing the student to remain in school would seriously harm the education or welfare of the student or others in the academy.

4.3 The decision on whether to suspend is for the Headteacher to take. However, where practical, the Assistant Principal for behaviour will give students an opportunity to present their case before taking the decision to suspend.

4.4 Whilst suspension may still be an appropriate sanction, the Headteacher will 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, has mental health issues or has been subject to bullying.

4.5 Early intervention to address underlying causes of disruptive behaviour will include an assessment of whether appropriate provision is in place to support any SEN or disability.

5. Suspension of students from groups with disproportionately high rates of suspension

5.1 The DfE guidance points out that suspension rates for certain groups of students are consistently higher than average. This includes:

- Students with SEND
- Students eligible for Free School Meals

- Looked after children
- Students from certain ethnic groups.

The ethnic groups with the highest rates of suspension are Gypsy/Roma, Travellers of Irish Heritage, and Black Caribbean communities.

6.2 In addition to the approaches on early intervention set out above, the Headteacher will consider what extra support might be needed to identify and address the needs of students from these groups in order to reduce their risk of suspension. For example, we might draw on the support of Traveller Education Services, or other professionals, to help build trust when engaging with families from Traveller communities

6. Suspension of students with EHC Plans and Looked After Children (LACs)

6.1 As well as having disproportionately high rates of suspension, we know there are certain groups of students with additional needs who are particularly vulnerable to the impacts of suspension. This includes students with an EHCP and looked after children. The Headteacher will, as far as possible, avoid excluding permanently any student with an EHC Plan or a looked after child.

6.2 Stone Soup Academy will engage proactively with parents in supporting the behaviour of students with additional needs. In relation to Looked After Children (LACs), schools should cooperate proactively with foster carers or children's home workers and the local authority that looks after the child. (***See the school LAC Policy for further details***)

6.3 Where the academy has concerns about the behaviour, or risk of suspension, of a child with additional needs, a student with an EHCP or a looked after child, we will, in partnership with others, (including the Local Authority as necessary) consider what additional support or alternative placement may be required. This will involve assessing the suitability of provision for a student's SEND.

6.4 Where a student has an EHCP, the SENCO will be involved to consider requesting an early annual review or interim / emergency review.

7. Informing parents/carers about suspension

7.1 Whenever the Headteacher suspends a student they will, without delay, notify parents/carers of the period of the suspension and the reasons for it.

7.2 They will also, without delay, provide parents/carers with the following information in writing:

- The reasons for the suspension
- The period of a fixed period suspension or, for a permanent exclusion, the fact that it is permanent
- The parents' right to make representations about the suspension to the governing body and how the student may be involved in this
- How any representations should be made
- Where there is a legal requirement for the Governing Body to consider the suspension, that parents have a right to attend a meeting, be represented at this meeting (at their own expense) and to bring a friend. **See Appendix 6 on remote meetings**

7.3 This information will be either delivering it directly to the parents/carers or by posting it to their

last known address.

7.4 Where a suspended student is of compulsory school age the Headteacher will also notify parents/carers by the end of the afternoon session that for the first five working days of suspension (or until the start date of any alternative provision where this is earlier) parents/carers are legally required to ensure that their child is not present in a public place during school hours without reasonable justification, and that parents/carers may be given a fixed penalty notice or prosecuted if they fail to do so.

7.5 If alternative provision is being arranged then the following information will be included with this notice where it can reasonably be found out within the timescale:

- The start date for any provision of full-time education that has been arranged for the student during the suspension
- The start and finish times of any such provision, including the times for morning and afternoon sessions where relevant
- The address at which the provision will take place
- Any information required by the student to identify the person he / she should report to on the first day.

7.6 Where this information on alternative provision is not available by the end of the afternoon session it may be provided in a subsequent notice, but it will be provided without delay and no later than 48 hours before the provision is due to start.

7.7 Parents/carers will be informed if a fixed period suspension is followed by a further suspension or is converted into a permanent exclusion. In such cases, the Headteacher will write again to explain the reasons for the new decision and provide any additional information required, including details of the right to make representations to the governing board and the process for requesting an independent review.

7.8 When informing parents about suspension the Headteacher will also set out what arrangements have been made to enable the student to continue their education prior to the start of any alternative provision or the student's return to the academy, in line with the guidance above.

7.9 The Headteacher will ensure that information provided to parents is clear and easily understood. Where the parents' first language is not English, consideration will be given, where practical, to translating the letter or taking additional steps to ensure that the details of the suspension and their right to make representations to the Governing Body have been understood.

8. Informing the Governing Body and the Local Authority

8.1 The Headteacher will notify the Governing Body and the Local Authority of

- A permanent exclusion (including where a fixed period suspension is made permanent ● suspensions which would result in the student being suspended for more than five working days (or more than ten lunchtimes) in a term
- suspensions that would result in the student missing a public examination or national curriculum test.
- The Headteacher will notify the LA of a permanent exclusion

8.2 The notification will include the reasons for the suspension and the duration of any fixed period suspension.

8.3 If a student lives outside the Local Authority the Headteacher will also advise the student's 'home authority' of the suspension without delay.

9. Arranging education for suspended students

9.1 For a fixed period suspension of more than five working days, the Governing Body will arrange suitable full time education for any student of compulsory school age. This provision will begin no later than the sixth day of the suspension.

9.2 For permanent exclusions, the Local Authority must arrange suitable full-time education for the student to begin no later than the sixth day of the suspension. This will be the student's 'home authority' in any cases where the student's home is in a different Local Authority.

9.3 Provision does not have to be arranged by either the academy or Local Authority for Stone Soup Academy students in the final year of compulsory education who do not have any further public examinations to sit.

9.4 Although the duty is to provide full-time education from the sixth day of suspension, there is an obvious benefit in starting this provision as soon as possible. In particular, in the case of a Looked After Child (LAC), the school and the Local Authority will work together to arrange alternative provision from the first day following the suspension.

9.5 Where it is not possible, or appropriate, to arrange alternative provision during the first five working days of suspension, the academy will take reasonable steps to set and mark work for students which will be accessible to and achievable by students outside of the academy.

10. The Governing Body and suspensions

10.1 Stone Soup Academy's Governing Body has a duty to consider parents' representations about suspension. ***The requirements on the Governing Body to consider suspension depend upon a number of factors explained in more detail in Appendix 2.***

10.2 The Governing Body may delegate their functions with respect to the consideration of suspension decision to a designated sub-committee consisting of at least three Governors.

11. Suspended students and the academy register

11.1 The Headteacher will remove a student's name from the school admissions register if

- 15 working days have passed since the parents were notified of the Governing Body's decision to uphold a permanent exclusion and no application has been made for an independent review panel

- The parents have stated in writing that they will not be applying for an independent review panel.

11.2 Where an application for an independent review panel has been made within 15 working days, the Headteacher will wait until the review has been determined, or abandoned, before removing a student's name from the register.

11.3 Where a student's name is removed from the academy register and a discrimination claim is subsequently made, the First-tier Tribunal or County Court has the power to direct that the student should be reinstated.

11.4 While the suspended student's name remains on Stone Soup Academy's admissions register the student will be marked using the appropriate attendance code.

11.5 Where alternative provision has been made that meets the requirements of the student registration regulations, and the student attends it, an appropriate attendance code, such as Code B (Education Off-site) or Code D (Dual Registration), will be used. Where students are not attending alternative provision, they will be marked absent using Code E.

12. Stone Soup Academy's duty to arrange an independent review panel

12.1 If applied for by parents within the legal time frame the Trust will arrange for an independent review panel hearing to review the decision of the Governing Body not to reinstate a permanently suspended student.

12.2 The legal time frame for an application is:

- Within 15 working days of notice being given to the parents by the Governing Body of their decision to uphold a permanent exclusion
- Where an application has not been made within this time frame, within 15 working days of the final determination of a claim of discrimination under the Equality Act 2010 in relation to the suspension.

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

12.4 The Trust will not delay or postpone arranging an independent review panel where parents also make a claim of discrimination in relation to the suspension to the First-tier Tribunal (Special Educational Needs and Disability) or the County Court.

12.5 Parents may request an independent review panel even if they did not make a case to, or attend the meeting at which the governing body considered the suspension.

12.6 The Trust will take reasonable steps to identify a date for the review that all parties are able to attend. However, the review will begin within 15 working days of the day on which the Trust received the parent's application for a review (panels have the power to adjourn a hearing if required).

12.7 The Trust will arrange a venue for hearing the review, which will be in private unless the panel directs otherwise.

12.8 Where the issues raised by two or more applications for review are the same, or connected, the panel may combine the reviews if, after consultation with all parties, there are no objections.

12.9 Statutory guidance to school Trusts on arranging a date and venue for a review are attached to this policy as ***Appendix 3*** and further information about their duties is attached as ***Appendix 5***.

13. The Role of the Panel

13.1 The role of the panel is to review the governing body's decision not to reinstate a permanently suspended student. In reviewing the decision, the panel must consider the interests and circumstances of the suspended student, including the circumstances in which the student was suspended, and have regard to the interests of other students and people working at the academy.

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

13.3 Following its review the panel can decide to:

- Uphold the suspension decision
- Recommend that the governing body reconsiders their decision
- Quash the decision and direct that the Governing Body considers the suspension again.

13.4 The panel's decision does not have to be unanimous and can be decided by a majority vote. In the case of a tied decision the chair has the casting vote.

13.5 The independent review panel's decision is binding on the student, parents, Governing Body, Headteacher and Stone Soup Academy Trust.

13.6 The panel may **only** quash the decision where it considers that it was flawed when considered in the light of the principles applicable on an application for judicial review.

13.7 New evidence may be presented to the panel, though the school may not introduce new reasons for the suspension and panels must disregard any new reasons that are introduced.

13.8 In deciding whether the Governing Body's decision was flawed, and therefore whether to quash the decision, the panel must only take account of the evidence that was available to the Governing Body at the time of making their decision. This includes any evidence that the panel considers would, or should, have been available to the Governing Body if they had been acting reasonably.
13.9 If evidence is presented that the panel considers is unreasonable to have expected the Governing Body to have been aware of at the time of their decision, the panel can take account of the evidence when deciding whether to recommend that the Governing Body reconsider their decision.

13.10 Where present, the panel will seek and have regard to the SEN expert's view of how SEN might be relevant to the student's suspension. Where a SEN expert has been requested but is not present, the panel should make parents aware of their right to request that the review is adjourned until such time as a SEN expert can attend.

13.11 If the panel upholds the permanent exclusion, the appointed clerk will immediately report this to the Local Authority. If the student lives outside the Local Authority, the clerk will make sure that the 'home authority' is also informed in writing without delay of the outcome of the review. This includes any situation where parents withdraw or abandon their application for a review

13.12 Where the panel directs or recommends that the Governing Body reconsiders their decision, the Governing Body will reconvene to do so within 10 working days of being given notice of the panel's decision. Notice is deemed to have been given on the same day if it is delivered directly or on the second working day after posting if it is sent by first class mail.

13.13 If, following a direction to reconsider, the Governing Body does not offer to reinstate the student within 10 working days of being notified of the panel's decision, Stone Soup Academy will be required to make a payment of £4,000 to the Local Authority. This payment will be in addition to any funding that would normally follow a suspended student.

13.14 If the Governing Body offers to reinstate the student within the specified timescale but this is declined by the parents, this payment will not be made. The Governing Body will comply with any direction of the panel to place a note on the student's educational record. This includes noting that, where a student is not reinstated following a direction to reconsider, the suspension does not count towards the rule that an admission authority may refuse to admit a child who has been suspended twice.

13.15 In the case of either a recommended or directed reconsideration, the Governing Body will notify the following people of their reconsidered decision, and the reasons for it, in writing and without delay:

- The parents
- The Headteacher
- The Local Authority and, where relevant, the 'home authority'.

14. Appointing a SEN expert

14.1 If requested by parents in their application for an independent review panel, Stone Soup Academy Trust will appoint a SEN expert to attend the panel and cover the associated costs of this appointment.

14.2 The Trust will make arrangements to indemnify the SEN 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.

14.3 Parents have a right to request the attendance of a SEN expert at a review, regardless of whether the school recognises that their child has SEN.

14.4 Individuals may not serve as a SEN expert if they have, or at any time have had, any connection with the Trust, school, parents or student, or the incident leading to the suspension which might reasonably be taken to raise doubts about their ability to act impartially. However, an individual is not taken to have such a connection solely because he/she is an employee of the Trust.

15. Police involvement and parallel criminal proceedings

15.1 The Headteacher will not postpone taking a decision on suspension solely because a police investigation is underway and/or any criminal proceedings may be brought. In such circumstances, the Headteacher will take a decision on the evidence available to them at the time.

15.2 Where the evidence is limited by a police investigation or criminal proceedings, the Headteacher will give particular consideration to ensuring that the decision to suspend is fair. However, the final decision on whether to suspend is for the Headteacher to make.

15.3 Where the Governing Body is required to consider a Headteacher's decision in these circumstances, they cannot postpone their meeting and must decide whether or not to reinstate the student on the evidence available.

15.4 The fact that parallel criminal proceedings are in progress will also not directly determine whether an independent review panel will 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

suspended student, the parents, any victim or the school

- Whether an adjournment or declining to adjourn, might result in injustice.

15.5 Where a panel decides to adjourn, the Trust 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.

16. Monitoring and Review

16.1 The Headteacher and Governing Body will review this policy at least annually and more often when legislation and guidance changes.

16.2 Its implementation and effectiveness will be monitored by the Headteacher and the Governing Body.

17 The school may, in rare and exceptional safeguarding circumstances, temporarily forbid a pupil from attending the premises where it is essential to physically separate two or more pupils and no practical alternative exists to keep all pupils safely on site. This measure is not considered an exclusion on disciplinary grounds and must be decided on a case-by-case basis, led by the **designated safeguarding lead** using their professional judgement and, where appropriate, in consultation with external agencies such as children's social care or the police. Parents/carers of any pupil affected must be informed of the reasons for the temporary restriction without delay, and the governing board must also be notified. During the period of absence, the local authority is responsible for arranging suitable education unless the school or the pupil's parents/carers choose to provide it themselves. The school will ensure appropriate support is in place to help the pupil reintegrate smoothly and safely into school life upon their return.

APPENDIX 1: A guide to the law from the DfE

1. Only the Headteacher of a school can suspend a student and this must be on disciplinary grounds. A student may be suspended for one or more fixed periods (up to a maximum of 45 school days in a single academic year), or permanently. A fixed period suspension does not have to be for a continuous period. In exceptional cases, usually where further evidence has come to light, a fixed period suspension may be extended or converted to a permanent exclusion.

2. Students whose behaviour at lunchtime is disruptive may be suspended from the school premises for the duration of the lunchtime period. In such cases the legal requirements in relation to suspension, such as the Headteacher's duty to notify parents, still apply. Lunchtime suspensions are counted as half a school day for statistical purposes and in determining whether a governing body meeting is triggered.

3. The behaviour of students outside school can be considered as grounds for suspension. This will be a matter of judgement for the Headteacher in accordance with the school's published behaviour policy.

4. The guidance allows Headteacher to cancel a suspension or exclusion *before* it has been reviewed

by the governing board. However, once the pupil is no longer attending school, the exclusion cannot be rescinded.

5. Any decision of a school, including suspension, must be made in line with the principles of administrative law i.e. that it is: lawful (with respect to the legislation relating directly to suspensions and a school's wider legal duties, including the European Convention of Human Rights), rational, reasonable, fair and proportionate.

6. Headteachers must take account of their legal duty of care when sending a student home following suspension.

7. When establishing the facts in relation to suspension decision the Headteacher must apply the civil standard of proof; i.e. 'on the balance of probabilities' it is more likely than not that a fact is true, rather than the criminal standard of 'beyond reasonable doubt'.

8. Under the Equality Act 2010 ("the Equality Act") schools must not discriminate against, harass or victimise students because of their sex, race, disability, religion or belief, sexual orientation, because of a pregnancy/maternity or because of a gender reassignment. For disabled children, this includes a duty to make reasonable adjustments to policies and practices.

9. In carrying out their functions under the Equality Act, the public sector equality duty means schools must also have due regard to the need to:

- Eliminate discrimination and other conduct that is prohibited by the Equality Act
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it
- Foster good relations across all characteristics – between people who share a protected characteristic and people who do not share it.

10. These duties need to be taken into account when deciding whether to suspend a student.

11. Schools must also ensure that their policies and practices do not discriminate against students by unfairly increasing their risk of suspension. Provisions within the Equality Act allow schools to take positive action to deal with particular disadvantages affecting one group, where this can be shown to be a proportionate way of dealing with such issues

12. Headteachers and governing bodies must take account of their statutory duties in relation to special educational needs (SEN) when administering the suspension process. This includes having regard to the SEN Code of Practice.

13. It is unlawful to suspend or to increase the severity of suspension for a non-disciplinary reason. For example, it would be unlawful to suspend a student simply because they have additional needs or a disability that the school feels it is unable to meet, or for a reason such as academic attainment/ability, the action of a student's parents, or the failure of a student to meet specific conditions before they are reinstated. Students who repeatedly disobey their teachers' academic instructions could, however, be subject to suspension.

14. 'Informal' or 'unofficial' suspensions, such as sending students home 'to cool off' are unlawful, regardless of whether they occur with the agreement of parents or carers. Any suspension of a student, even for short periods of time, must be formally recorded.

15. Maintained schools have the power to direct a student off-site for education to improve his or her behaviour

16. A student can also transfer to another school as part of a 'managed move' where this occurs with the consent of the parties involved, including the parents. However, the threat of suspension must never be used to influence parents to remove their child from the school.

APPENDIX 2: The Duties of the Governing Body
This appendix outlines the statutory duties of the governing body in relation to student suspensions and exclusions, in accordance with the Department for Education's guidance effective from 1 September 2023.

1. The Governing Body will consider the reinstatement of a suspended student within 15 school days of receiving notice of the suspension if:

- The exclusion is permanent
- It is a fixed period suspension which would bring the student's total number of school days of suspension to more than 15 in a term
- It would result in a student missing a public examination or national curriculum test.

2. If requested to do so by the parents, the Governing Body will consider the reinstatement of a suspended student within 50 school days of receiving notice of the suspension if a student would be suspended from school for more than five school days, but not more than 15, in a single term.

3. Where suspension would result in a student missing a public examination or national curriculum test there is a further requirement for a governing body, so far as is reasonably practicable, to consider the suspension before the date of the examination or test. If this is not practicable, the chair of governors may consider the suspension independently and decide whether or not to reinstate the student. These are the only circumstances in which the chair can review suspension decisions alone. In such cases parents still have the right to make representations to the governing body and must be made aware of this right.

4. The following parties must be invited to a meeting of the governing body and allowed to make representations:

- Parents
- The Headteacher
- A representative of the local authority (in the case of a maintained school or PRU)

5. The governing body must make reasonable endeavours to arrange the meeting for a date and time that is convenient to all parties, but in compliance with the relevant statutory time limits set out above. However, its decision will not be invalid simply on the grounds that it was not made within these time limits.

6. In the case of a fixed period suspension which does not bring the student's total number of days of suspension to more than five in a term, the governing body must consider any representations made by parents, but it cannot direct reinstatement and is not required to arrange a meeting with parents. Statutory guidance to governing bodies in preparing for the consideration of suspension decision

7. Where the governing body is legally required to consider the decision of a Headteacher to suspend a student, they should

- Not discuss the suspension with any party outside of the meeting
- Ask for any written evidence in advance of the meeting (including witness statements and other relevant information held by the school such as those relating to a student's SEND)
- Where possible, circulate any written evidence and information, including a list of those who will be present, to all parties at least five school days in advance of the meeting
- Allow parents and students to be accompanied by a friend or representative (where a student under 18 is to be invited as a witness, the governing body should first seek parental consent and invite the parents to accompany their child to the meeting)
- Have regard to their duty to make reasonable adjustments for people who use the school and consider what reasonable adjustments should be made to support the attendance and contribution of parties at the meeting (for example where a parent or student has a disability in relation to mobility or communication that impacts upon their ability to attend the meeting or to make representations)
- Identify the steps they will take to enable and encourage the suspended student to attend the meeting and speak on their own behalf (such as providing accessible information or allowing them to bring a friend), taking into account the student's age and understanding, or how the suspended student may feed in their views by other means if attending the suspension meeting is not possible.

8. Whilst there is no automatic right for a suspended student to take an examination or test on the, school's premises from which the student was excluded the governing body should consider whether it would be appropriate to exercise their discretion to allow a suspended student on the premises for the sole purpose of taking the examination or test.

9. Where the governing body is legally required to consider suspension, they must consider the interests and circumstances of the suspended student, including the circumstances in which the student was suspended, and have regard to the interests of other students and people working at the school.

10. The governing body must also consider any representations made by
- Parents
- The Headteacher
- A representative of the local authority (in the case of a maintained school or PRU)

11. When establishing the facts in relation to suspension decision the governing body must apply the civil standard of proof; i.e. 'on the balance of probabilities' it is more likely than not that a fact is true rather than the criminal standard of 'beyond reasonable doubt'. In the light of their consideration, the governing body can either uphold suspension or direct reinstatement of the student immediately or on a particular date.

12. Where reinstatement is not practical because for example, the student has already returned to school following the expiry of a fixed period suspension or the parents make clear they do not want their child reinstated, the governing body must, in any event, consider whether the Headteacher's decision to suspend the child was justified based on the evidence.

13. The governing body should identify the steps they will take to ensure all parties will be supported to participate in their consideration and have their views properly heard. This is particularly important where students under 18 are speaking about their own suspension or giving evidence to the governing body.

14. The governing body should ensure that clear minutes are taken of the meeting as a record of the evidence that was considered by the governing body. These minutes should be made available to all parties on request.

15. The governing body should ask all parties to withdraw before making a decision. Where present, a clerk may stay to help the governing body by reference to their notes of the meeting and with the wording of the decision letter.

16. In reaching a decision on whether or not to reinstate a student, the governing body should consider whether the decision to suspend the student was lawful, reasonable and procedurally fair, taking account of the Headteacher's legal duties.

17. The governing body should note the outcome of their consideration on the student's educational record, along with copies of relevant papers for future reference.

18. In cases where the governing body considers parents' representations but does not have the power to direct a student's reinstatement, they should consider whether it would be appropriate to place a note of their findings on the student's educational record.

19. Claims of discrimination to the First-tier Tribunal or County Court can be made up to six months after the discrimination is alleged to have occurred. Where practicable, schools should retain records and evidence relating to suspension for at least six months in case such a claim is made.

20. Where legally required to consider suspension, the governing body must notify parents, the Headteacher and the local authority of their decision, and the reasons for their decision, in writing and without delay. Where the student resides in a different local authority from the one that maintains the school, the governing body must also inform the student's 'home authority'.

21. In the case of a permanent exclusion the governing body's notification must also include the information below.

- The fact that it is permanent
- Notice of parents' right to ask for the decision to be reviewed by an independent review panel and the following information:

  a) The date by which an application for a review must be made (i.e. 15 school days from the date on which notice in writing of the governing body's decision was given to parents) b) The name and address to whom an application for a review (and any written evidence) should be submitted

  c) That any application should set out the grounds on which it is being made and that, where appropriate, this should include a reference to how the student's special educational needs are considered to be relevant to the suspension

  d) That, regardless of whether the suspended student has recognised special educational needs, parents have a right to require the local authority / Academy Trust to appoint a SEN expert to attend the review;

  e) Details of the role of the SEN expert and that there would be no cost to parents for this appointment;

  f) That parents must make clear if they wish for a SEN expert to be appointed in any application for a review

  g) That parents may, at their own expense, appoint someone to make written and/or oral

representations to the panel and that parents may also bring a friend to the review. ● That, in addition to the right to apply for an independent review panel, if parents believe that the suspension has occurred as a result of discrimination then 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

- That a claim of discrimination made under these routes should be lodged within six months of the date on which the discrimination is alleged to have taken place e.g. the day on which the student was suspended.

22. The governing body may provide the information in delivering it directly to parents; leaving it at their last known address; or by posting it to this address.

23. Notice is deemed to have been given on the same day if it is delivered directly, or on the second working day after posting if it is sent by first class mail.
24. The governing body should set out the reasons for their decision in sufficient detail to enable all parties to understand why the decision was made.

25. Where relevant, it will be for schools to confirm the details of where the parents' application for an independent review panel should be sent. This is normally the clerk of the independent review panel.

26. In providing details of the role of the SEN expert, the governing body should refer to the statutory guidance provided to SEN experts.

27. Where the governing body decides to uphold suspension, they should draw the attention of parents to relevant sources of free and impartial information that will allow them to make an informed decision on whether and, if so, how to seek a review of the decision. This information should be included in the letter notifying parents of a decision to uphold suspension and should include:

- A link to the statutory guidance on suspensions: suspension guidance
- A link to guidance on making a claim of discrimination to the First-tier Tribunal http://www.justice.gov.uk/tribunals/send/appeals
- A link to the Coram Children's Legal Centre: www.childrenslegalcentre.com 08088 020 008
- Where considered relevant by the governing body, links to local services such as Traveller Education Services or the local parent partnership (www.parentpartnership.org.uk).

APPENDIX 3: Statutory Guidance on Arranging a Date and Venue for a Review

1. Venue Arrangements

- Local authorities/Academy Trusts must take all reasonable steps to ensure the venue for the

review is appropriate, accessible to the parties, and has a suitable area for the parties to wait separately from the panel before the review.

2. Multiple Related Reviews

- Where the issues raised by two or more applications for review are the same or connected, but the panel does not combine the reviews, the local authority/Academy Trust should take reasonable steps to ensure fairness and consistency. Where possible, the same panel members should hear all related reviews.

3. Panel Composition

- The panel must consist of either three or five members, as decided by the local authority/Academy Trust, representing each of the following categories:
    - **Lay member** (to chair): Must not have worked in any school in a paid capacity, disregarding any experience as a school governor or volunteer.
    - **School governors**: Must have served as a governor for at least 12 consecutive months in the last five years and must not have been teachers or Headteachers during this time.
    - **Headteachers**: Must be current Headteachers or individuals who have served as a Headteacher within the last five years.
- A five-member panel must include:
    - One lay member (chair)
    - Two school governors
    - Two Headteachers or former Headteachers

4. Disqualification Criteria

A person may not serve as a panel member if they:

- Are a member/director of the local authority/Academy Trust or governing body of the excluding school
- Are the Headteacher of the excluding school or have held that position in the last five years
- Are an employee of the local authority/Academy Trust or the governing body of the excluding school (unless employed as a Headteacher at another school)
- Have, or have had, any connection with the local authority/Academy Trust, school, parents, student, or the incident leading to the suspension that might reasonably raise doubts about their impartiality (being a Headteacher at another school does not automatically constitute such a connection)
- Have not received the required training within the last two years

5. Panel Member Allowances

- For local authority-appointed panel members, sections 173(4) and 174(1) of the Local Government Act 1972 apply when determining allowances for financial loss, travel, or subsistence.
- Academy Trusts must determine their own payment arrangements for panel members.

6. Legal Indemnity

- The local authority/Academy Trust must indemnify panel members against any legal costs and expenses reasonably incurred as a result of decisions or actions taken in good faith during the review.

7. Conflict of Interest

- Every care should be taken to avoid bias or the appearance of bias. Prospective panel members should be asked to declare any conflict of interest at the earliest opportunity.

8. Educational Phase Representation

- Where possible, governors and Headteachers on the panel should reflect the phase of education and type of school from which the student was suspended (e.g. primary, secondary, special school, PRU, Academy, maintained school).

9. Legal Expertise

- The local authority/Academy Trust should consider appointing a chair with legal qualifications or experience, especially where the clerk will not be providing legal expertise.

10. Panel Member Pool

- To meet statutory timeframes, local authorities/Academy Trusts should identify a pool of eligible individuals in each category in advance of any review application.

Clerk Responsibilities and Review Procedure

11. Clerk Appointment

- The local authority/Academy Trust may appoint a clerk to advise the panel and parties on procedure, legislation, and statutory guidance.

12. Clerk Duties

The clerk must:

- Inform the following parties of their rights to submit written representations, attend and make oral representations, be represented, and (in the case of parents) bring a friend:
    - The parents
    - The Headteacher (or former Headteacher, at the panel's discretion)
    - The governing body
    - The local authority (for maintained schools or student referral units)
- Circulate relevant papers to all parties, including panel members and the SEN expert, at least five school days before the review. These must include:
    - The governing body's decision
    - The parents' application for review
    - Any policies or documents the governing body was required to consider
- Provide details of attendees and their roles once confirmed
- Attend the review and ensure minutes are produced in accordance with panel instructions

13. Clerk Absence

- If no clerk is appointed, the local authority/Academy Trust must assume all responsibilities listed above.

14. Clerk Independence

- The clerk should not have served as clerk to the governing body meeting that made the suspension decision.

15. Clerk Training

- In addition to statutory training, clerks should maintain up-to-date knowledge of relevant case law, legislation, and guidance.

16. Administrative Oversight

- Where no clerk is appointed, the local authority/Academy Trust should take additional steps to ensure proper administration of the review.

17. Student Participation

- The clerk should confirm in advance whether the student will attend. If attending, steps should be taken to support their participation. If not attending, they may submit views via a representative or written statement.

18. Victim Participation

- The clerk should ascertain whether any alleged victim wishes to contribute, either in person, through a representative, or via written statement.

19. Student Witnesses

- Panels should generally rely on written statements from student witnesses. If a student appears voluntarily and with parental consent, their parents should be invited to attend in support.

20. Character Witnesses

- The clerk should seek panel approval for character witnesses. Approval should be granted unless there is a valid reason to refuse.

21. Witness Statements

- All written witness statements should be attributed, signed, and dated. If anonymity is necessary, statements should be dated and labelled to distinguish them. Suspended students must be informed of the substance of the case against them.

22. Representation Rights

- All parties may be represented and make written or oral representations. If a party wishes to bring more than one friend or representative, the clerk should seek panel approval, considering reasonable limits. All parents may attend and participate.

23. School Evidence

- The clerk should request written evidence from the school, including policies and documents the governing body should have considered.

24. Physical Evidence

- If the school's case relies on physical evidence and facts are disputed, the evidence should be retained and made available. If retention is impractical, photographs or signed witness statements should be used.

25. Missing Documents

- The clerk should notify the panel if requested documents are missing so the panel can decide whether to adjourn.

26. Panel and Clerk Training

All panel members and clerks must have received training within the two years prior to the review. Training must include:

- Relevant legislation, regulations, and statutory guidance on suspensions
- Principles of judicial review and decision-making
- Procedural fairness and natural justice
- Roles of the panel chair and clerk
- Duties under the Equality Act 2010
- Human rights obligations under the Human Rights Act 1998

APPENDIX 5: Further Duties of the Panel

1. Where a panel directs a governing body to reconsider suspension it has the power to order that a readjustment of the school's budget must be made or (in the case of an Academy) that the school must make an equivalent payment to the local authority if the governing body does not offer to reinstate the student within 10 school days of receiving notice of the panel's decision. The sum of this adjustment/payment must be £4,000 and would be in addition to any funding that would normally follow a suspended student.

2. The panel does not have the power to order a readjustment or payment in circumstances where it has only recommended that the governing body reconsiders their decision.

3. The panel may adjourn on more than one occasion, if necessary. However, consideration must be given to the effect of adjournment on the parties to the review, the suspended student and any victim.

4. A review cannot continue if the panel no longer has representation from each of the three categories of members required (see paragraph 93). In this event, the panel must be adjourned until the number can be restored.

5. Once a review has begun, no panel member may be substituted by a new member for any reason. Accordingly, if the required representation cannot be restored from the original members, a new panel must be constituted to conduct the review afresh. In the case of a five-member panel, the panel may continue in the absence of any of its members, provided all three categories of members are still represented.

6. Following the review, the panel must issue written notification to all parties without delay. This notification must include:

- The panel's decision and the reasons for it
- Where relevant, details of any financial readjustment / payment to be made if a governing body subsequently decides not to offer to reinstate a student
- Any information that must be recorded on the student's educational record to reflect the decision (in particular, where a governing body does not decide to reinstate a student following a direction to reconsider, it must be noted that the suspension will not count towards the rule that an admission authority may refuse to admit a child who has been suspended twice; or in the case of a community or voluntary controlled school, that the governing body may appeal against the decision of the local authority as the admission authority to admit the child).

7. The chair should outline the procedure to be followed and explain to all parties that the panel is independent of the school, the local authority or (in the case of an Academy) the Academy Trust.

8. The panel should support all parties to participate in the review and ensure that their views are properly heard. The independent review should be conducted in an accessible, non-threatening and non-adversarial manner.

9. It is for the panel to decide whether any witnesses should stay for the rest of the review, but they should not be present before giving evidence.

10. In the interests of propriety, care should be taken to ensure that no party, other than the clerk, is present with the panel in the absence of the other parties. This includes the SEN expert. The panel should ask all parties, apart from the clerk, to withdraw before making a decision. The clerk may stay to help the panel by referring to the notes of the meeting and providing advice on the wording of the decision letter.

11. When considering the governing body's decision in light of the principles applicable in an application for judicial review, the panel should apply the following tests:

- Illegality – did the Headteacher and/or governing body act outside the scope of their legal powers in taking the decision to suspend?
- Irrationality – was the decision of the governing body not to reinstate the student so unreasonable that it was not one a sensible person could have made?
- Procedural impropriety – was the process of suspension and the governing body's consideration so unfair or flawed that justice was clearly not done?

12. Procedural impropriety means not simply a breach of minor points of procedure but something more substantive that has a significant impact on the quality of the decision-making process. This will

be a judgement for the panel to make but the following are examples of the types of things that could give rise to procedural impropriety:

- Bias
- Failing to notify parents of their right to make representations
- The governing body making a decision without having given parents an opportunity to make representations
- Failing to give reasons for a decision; or being a judge in your own cause (for example, if the Headteacher who took the decision to suspend were also to vote on whether to uphold the suspension

13. Where the criteria for quashing a decision have not been met the panel should consider whether it would be appropriate to recommend that a governing body reconsiders their decision not to reinstate the student. This should not be the default option, but should be used where evidence or procedural flaws have been identified that do not meet the criteria for quashing the decision but which the panel believe justify a reconsideration of the governing body's decision.

14. In all other cases the panel should uphold the suspension.

15. In the case of a maintained school or PRU, where a panel has quashed the governing body's decision and directed that they reconsider, the panel should order that a readjustment must be made to the school's budget, unless the governing body subsequently offers to reinstate the student. The only exception to this is where a school does not have a delegated or separate budget from the local authority from which the readjustment can be made.

16. In the case of an Academy, where the panel has quashed the governing body's decision, the panel should order that the Academy must make a payment directly to the local authority in which the Academy is located, unless the governing body offers to reinstate the student.

17. The panel should order that the readjustment or (in the case of an Academy) payment is due automatically if the governing body has not offered to reinstate the suspended student within 10 school days of being notified of a direction to reconsider. The panel does not have to reconvene to issue this order.

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

19. The minutes are not public documents but should be retained by the local authority/Academy Trust for a period of at least five years, as they may need to be seen by a court or (in the case of maintained school) by the Local Government Ombudsman. Local authorities /Academy Trusts should be aware of their duties under the Freedom of Information Act 2000 and the Data Protection Act 2018 (GDPR) when retaining information.

DFE Key points

- Good discipline in schools is essential to ensure that all students can benefit from the opportunities provided by education. The Government supports headteachers in using suspension as a sanction where it is warranted. However, permanent exclusion should only be used as a last resort, in response to a serious breach, or persistent breaches, of the school's

behaviour policy; and where allowing the student to remain in school would seriously harm the education or welfare of the student or others in the school.

- The decision to suspend a student must be lawful, reasonable, and fair. Schools have a statutory duty not to discriminate against students based on protected characteristics, such as disability or race. Schools should consider the fair treatment of students from groups who are vulnerable to suspension.
- Disruptive behaviour can be an indication of unmet needs. Where a school has concerns about a student's behaviour it should try to identify whether there are any causal factors and intervene early to reduce the need for a subsequent suspension. In this situation schools should consider a multi-agency assessment that goes beyond the student's educational needs.
- Schools should have a strategy for reintegrating students that return to school following a fixed period suspension, and for managing their future behaviour.
- All children have a right to an education. Schools should take reasonable steps to set and mark work for students during the first five school days of a suspension, and alternative provision must be arranged from the sixth day. There are obvious benefits in arranging alternative provision to begin as soon as possible after a suspension.
- Where parents or carers dispute the decision of a governing body not to reinstate a permanently suspended student, they can ask for this decision to be reviewed by an independent review panel. Where there is an allegation of discrimination (under the Equality Act 2010) in relation to a fixed-period or permanent exclusion, parents or carers can also make a claim to the First-tier Tribunal (for disability discrimination) or a County Court (for other forms of discrimination).
- Whether or not a school recognises that a student has special educational needs (SEN), all parents and carers (or students if aged 18 or over) have the right to request the presence of a SEN expert at an independent review panel. The SEN expert's role is to provide impartial advice to the panel about how SEN could be relevant to the suspension; for example, whether the school acted reasonably in relation to its legal duties when excluding the student.
- suspended students should be enabled and encouraged to participate at all stages of the suspension process, considering their age and understanding.

APPENDIX 6: Requests for remote access meetings for governing board meetings or IRPs

Parents (if the pupil is under 18) or excluded pupils (if they are aged 18 years or older) can request a meeting to be held via the use of remote access but this should not be a default option. Governing boards or arranging authorities must hold the meeting via the use of remote access, if the request has been made correctly as set out in the headteacher's written notification (described in paragraph 64 in Suspension and Permanent Exclusion from maintained schools, academies and pupil referral units in England, including pupil movement document) or the governing board's written notification to the parents that they can request an IRP (described in paragraph 132). Holding meetings via remote access must only be done if governing boards or arranging authorities are satisfied94 that the meeting is capable of being held fairly and transparently (described in paragraphs 249 and 250).

For further information, please refer to the DFE document titled, *"Suspension from maintained schools, Academies and student referral units in England A guide for those with legal responsibilities in relation to suspension", "2017 Suspension Guidance", School Discipline Regulations 2012. Published 20 June 2012 Last updated 1 September 2023*