

Katharine Lady Berkeley's School

Suspensions and Permanent Exclusions Policy

Introduction

Katharine Lady Berkeley's School (the "**School**") is committed to providing a high-quality education for all our pupils in a happy and safe environment. This suspension and permanent exclusions policy complies with the Department for Education's (**DfE's**) statutory guidance on "*Suspension and Permanent Exclusion from maintained schools, academies and pupil referral units in England, including pupil movement*" that came into effect from September 2023. It should be read in conjunction with the Department for Education's "*Behaviour in Schools*" guidance, as well as our Behaviour and Discipline; Bullying; Use of Reasonable Force; and Searching, Screening and Confiscation policies.

Head teacher's role

The School does not adopt a 'no exclusion' policy as it is recognised that not all pupil behaviour can be amended or remedied by pastoral processes, or consequences within the School. The Head teacher (or acting Head teacher) may suspend or permanently exclude a pupil on disciplinary grounds. Suspension or permanent exclusion may be used for a range of behaviours, including:

- actual or threatened violence or intimidation
- sexual abuse or assault
- supplying banned substances
- carrying an offensive weapon
- setting off the fire alarm
- serious damage to property
- behaviour affecting other people's health and safety
- behaviour which is out of the control of the teacher
- offensive language directed at a member of staff
- total defiance
- dangerous behaviour
- abuse on the grounds of a protected characteristic

The Head teacher may also suspend or permanently exclude a pupil for a breach of the School's Behaviour and Discipline policy. These are non-exhaustive examples and the Head teacher will consider the appropriate action following each incident. The behaviour of a pupil outside the School can be considered grounds for a suspension or permanent exclusion.

The Head teacher will not suspend or permanently exclude a pupil for a non-disciplinary reason (this includes the action of a pupil's parents). Suspension or permanent exclusion may, however, be justified if a pupil repeatedly disobeys academic instructions.

A pupil may be suspended for one or more fixed periods (of up to 45 school days in an academic year) or permanently excluded. A suspension does not have to be for a continuous period. If a pupil's behaviour at lunch time is disruptive, they may be suspended for lunchtimes only (each lunchtime counts as half a day).

A permanent exclusion should only be used as a last resort where there has been:

- a serious breach or persistent breaches of the School's Behaviour policy; and
- where allowing the pupil to remain in the School would seriously harm the education or welfare of the pupil or others in the school.

Any decision to exclude a pupil must be lawful, reasonable, fair and proportionate. The School will not engage in unlawful "off-rolling." Ofsted defines off-rolling as: *"...the practice of removing a pupil from the school roll without a formal, permanent exclusion or by encouraging a parent to remove their child from the school roll, when the removal is primarily in the interests of the school rather than in the best interests of the pupil."* Informal exclusions, such as sending a pupil home to cool off, are not permitted.

The Head teacher must apply the civil standard of proof "*on the balance of probabilities*" when establishing the facts in relation to a suspension or permanent exclusion decision. This means that the Head teacher should accept that something happened if it is more likely that it happened than that it did not happen. The Head teacher should, where practical, give the pupil an opportunity to present their case, before making a decision to exclude. The views of the pupil will be taken into account by the Head teacher, considering these in light of the pupil's age and understanding, before deciding to suspend or permanently exclude the pupil, unless it would not be appropriate to do so. The Head teacher will inform the pupil about how their views have been factored into any decision made. Where relevant, the pupil will be given support to express their view, including through advocates such as parents or, if the pupil has one, a social worker.

When the Head teacher suspends a pupil they or an appointed member of senior staff will, without delay, notify parents of the period of suspension and the reasons for it. Where the pupil has a social worker, or is looked-after, the Head teacher or an appointed member of senior staff will, without delay, notify the social worker and/or virtual school head as applicable. In all cases of suspension or permanent exclusion the local authority and, where relevant, the pupil's home authority will also be notified without delay. Where the suspension pupil is of compulsory school age, the Head teacher will also notify parents that for the first five days of the suspension they are legally required to ensure that their child is not in a public place during school hours without reasonable justification. Parents may be prosecuted or given a fixed penalty notice if they fail to do so.

Following a suspension, the School will hold a re-integration meeting with the pupil, parents and a member of senior staff and other staff as appropriate. The School will not prevent the pupil from returning to the classroom if the parents are unable or unwilling to attend a re-integration meeting. The School may implement certain measures on the pupil's return including putting the pupil on report.

A suspension cannot be extended or converted into a permanent exclusion. In exceptional cases, however, the Head teacher may issue a further suspension or a permanent exclusion to begin immediately after the end of the first suspension (this will usually occur where further evidence has come to light).

The Head teacher may also withdraw a suspension or permanent exclusion, if appropriate, that has not been reviewed by the Board of Trustees. Where a suspension or permanent exclusion is cancelled, the Headteacher will notify the parents, the Board of Trustees, the local authority, and the pupil's social worker and virtual school head if applicable, without delay, providing a reason for the cancellation. Parents will be offered the opportunity to meet with the Head teacher to discuss the circumstances that led to the suspension or permanent exclusion being cancelled, which should be arranged without delay. Any days spent out of school as a result of any suspension or permanent exclusion, prior to the cancellation, will count towards the maximum of 45 school days permitted in any school year. A permanent exclusion cannot

be cancelled if the pupil has already been excluded for more than 45 days in a school year, or if they will have been so by the time the cancellation takes effect.

Vulnerable pupils

Where there are concerns about a pupil's behaviour, the School will try to intervene early to reduce the need for suspension or permanent exclusion. The Head teacher will consider the need for a multi-agency approach for a pupil who demonstrates persistent disruptive behaviour. The Head teacher will also take into account any contributing factors, for example, where a pupil has been subject to bullying, known to the School.

The School will not discriminate against pupils on the grounds of sex, race, disability, religion or belief, sexual orientation, pregnancy/maternity, or gender reassignment.

As some of our pupils may have Education Health and Care plans (**EHC plans**), we will, as far as possible, avoid permanently excluding these pupils and any looked after child. The Head teacher will consider whether to request an emergency review for children with EHC plans at risk of suspension.

Duty to arrange education

The School will take steps to ensure that work is set and marked for a suspended pupil during the first 5 school days of a suspension. The Board of Trustees must arrange suitable full-time education for any pupil of compulsory school age for a suspension of more than 5 school days. This must begin no later than the sixth school day of the suspension. If a pupil has more than 5 consecutive school days of suspension, then education must be arranged, regardless of whether this is as a result of one suspension or several suspensions.

For permanent exclusions, the Head teacher will take reasonable steps to ensure that work is set and marked for the pupil during the first 5 school days where the pupil will not be attending alternative provision. The local authority must arrange suitable full-time education for the pupil to begin no later than the sixth school day of the exclusion.

Board of Trustees' role

The Board of Trustees has a duty to consider the reinstatement of a suspended or permanently excluded pupil if:

- it is a permanent exclusion;
- it is a suspension that would bring the pupil's total number of school days of exclusion to more than 15 in a term; or
- it would result in a pupil missing a public exam or national curriculum test.

The Board of Trustees must consider reinstatement within 15 school days of receiving notice of the suspension or permanent exclusion.

For suspensions where a pupil would be suspended for more than 5 but not more than 15 school days in a term, if the parents make representations, the Board of Trustees must consider within 50 school days of receiving the notice of suspension whether the pupil should be reinstated. In the absence of any representations from the parents, the Board of Trustees is not required to meet and cannot direct the reinstatement of the pupil.

The Board of Trustees must consider any representations from parents in the case of a fixed period suspension of 5 or fewer school days in a term but it cannot direct reinstatement and is not required to arrange a meeting with the parents.

The Board of Trustees may delegate its duty to consider suspension to a smaller sub-committee. Where the Board of Trustees is legally required to consider the reinstatement of a suspended or permanently excluded pupil, we will arrange a meeting with the Head teacher, the parents and the pupil, who may be accompanied by a friend or representative. The Board of Trustees will consider the interests and circumstances of the suspended pupil and have regard to the interests of other pupils and staff at the School.

The Board of Trustees will consider whether the decision to suspend the pupil was lawful, reasonable and procedurally fair. In reaching its decision, the Board of Trustees can either decline to reinstate the pupil or direct reinstatement. It must then notify parents, the Head teacher and the local authority of its decision and the reasons for it without delay. In the case of a permanent exclusion, the Board of Trustees will include information about the parents' right to ask for the decision to be reviewed by an independent review panel.

If parents believe that there has been unlawful discrimination in relation to the suspension then they may make a claim to the First Tier Special Educational Needs and Disability Tribunal in the case of disability discrimination or for other forms of discrimination to the County Court.

Independent Review Panel

The School will establish an independent review panel, if requested by parents, to arrange a hearing to review the decision of the Board of Trustees not to reinstate a permanently excluded pupil. The time frame for an application is within 15 school days of notice being given by the Board of Trustees of its decision. A review must then take place within 15 school days of the day on which the parents' application for a review was made.

The independent review panel will be established with either 3 or 5 members including a lay member who has not worked in any school in a paid capacity to chair the panel. Parents and the Head teacher attending the hearing will have a right to bring a friend or to be represented at the hearing. If requested by the parents with their application for an independent review, a Special Educational Needs (**SEN**) expert should attend the hearing to advise on whether the School's SEN policies or the application of these policies in relation to the permanently excluded pupil were lawful, reasonable, and procedurally fair. The SEN expert's role does not include making an assessment of the pupil's special educational needs.

The role of the independent review panel is to review the Board of Trustees decision not to reinstate the permanently excluded pupil applying the civil standard of proof. The panel can decide to:

- Uphold the Board of Trustees' decision;
- Recommend the Board of Trustees reconsiders reinstatement; or
- Quash the decision and direct that the Board of Trustees reconsiders reinstatement.

The panel may only quash the Board of Trustees' decision if it considers that it was flawed when considered in light of the principles applicable on an application for judicial review.

The panel should apply the following tests:

- Illegality – did the Board of Trustees act outside the scope of its powers?
- Irrationality – was the decision so unreasonable that no reasonable Board of Trustees could make it?
- Procedural impropriety – was the Board of Trustees decision so procedurally flawed that justice was not done?

If the criteria for quashing the decision have not been met, the panel should consider whether it would be appropriate to recommend that the Board of Trustees reconsiders its decision. This may be used where evidence of procedural flaws has been identified that do not meet the criteria for quashing the decision but may justify a reconsideration of the Board of Trustees decision. The panel's decision can be decided by a majority vote. In the case of a tied decision, the chair has the casting vote. The panel must notify all parties of its decision without delay.

Board of Trustees' duty to reconsider reinstatement

Where the independent review panel directs or recommends that the Board of Trustees reconsider reinstatement, it will reconvene within 10 school days of notice of this decision. The Board of Trustees will conscientiously reconsider reinstatement looking afresh at the question in light of the panel's findings. The Board of Trustees may still reach the same decision but if it refuses to reinstate the pupil it will need to show clear justification.

Virtual meetings

Board of Trustees reinstatement meetings and independent review panel meetings may be held via the use of remote access, such as live video link if requested by the parents. However, this will not be the default option and face to face meetings will always be encouraged. Where the parent does not request a remote meeting, or does not state a wish either way, the meeting must be held in person unless it is not reasonably practicable to do so for a reason related to extraordinary events or unforeseen circumstances, such as an unforeseen school closure due to floods, fire or outbreak of infectious illness/disease.

If technological or internet network issues during a remote meeting compromise the ability for participants to be seen or heard, or prevents the meeting from being held fairly and transparently and it is not reasonably practicable to resolve, an in person meeting must be arranged without delay.

School register

The Board of Trustees must ensure that a pupil's name is removed from the admissions register if:

- 15 school days have passed since the parents were notified of the Board of Trustees decision not to reinstate the pupil and no application has been made to an independent review panel; or
- The parents have confirmed in writing that they will not be applying to an independent review panel.

Where an application to an independent review panel has been made, the review must be determined, and the Board of Trustees will complete any reconsideration, before removing a pupil's name from the register.

Reviewed by: Community and Wellbeing

Date: December 2023

Next review date: December 2024