

A Guide for Governing Body Discipline Committees (GBDC) when holding a meeting to consider the reinstatement of an excluded pupil



Introduction

This booklet has been produced to assist members of a GBDC when reviewing the decision of a Headteacher to exclude a pupil, either for a fixed period or permanently. It applies to both Academies and maintained schools.

It should be read in conjunction with the Department for Education's (DFE) Guidance entitled, "Exclusion from maintained schools, Academies and pupil referral units in England" which can be found on the DFE website:

<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion/g00210521/statutory-guidance-regs-2012>

This booklet is intended to compliment that Guidance and not be a substitute for it. This guide has however been written by solicitors in the Local Authority's Legal Services Governance Team who have experience in advising schools, the LA and Independent Review Panels and with an understanding of the difficult role that the GBDC plays in challenging the decision of a Headteacher. It is hoped that this guide will give practical support to a GBDC when you have to ask your Headteacher to account to parents, their governors and the LA for their decision to exclude a pupil.

Ultimately the GBDC may have to account for its own decision to the Independent Review Panel (IRP). It is therefore vital that you are able to demonstrate that you have followed the procedures correctly and tested your Headteacher's case so that you are able to present a robust decision with well-thought out reasons that can supported with the evidence in your GBDC minutes and the letter recording your decision to parents.

A separate leaflet has also been produced entitled "Best Practice Guidance on the Procedure at the Governing Body Discipline Committee to consider the reinstatement of an excluded pupil". This sets out a suggested step-by-step procedure to follow at the hearing.

As well as these Guides, support and assistance is available from:

Governor Support Team

Advice, guidance, training and a clerking service

Telephone Helpline number: 0114 250 6887

<https://www.sheffield.gov.uk/education/schoolgovernors/contact-governor-support-.html>

Inclusion Service

Advice on early intervention strategies

Telephone 0114 283 5899

Legal Services

CorpLegalCYPD@sheffield.gov.uk

Angela Lee 0114 205 3467

Louise Slater 0114 273 4004

Deborah Eaton 0114 205 3305

Nadine Wynter 0114 273 6564

Legal advice, support and training to Governing Bodies and Headteachers

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1. The purpose of the meeting

Whether the parents of the excluded pupil attend or not, the purpose of your hearing is to consider the reinstatement of the excluded pupil. This should therefore be at the forefront of your deliberations.

As parents have the right to request the LA or an Academy Trust to arrange an IRP which will review your decision, it is crucial that you follow the correct procedures so that you can demonstrate to the IRP that you have followed the principles of administrative law by acting fairly and by being seen to act fairly.

2. What to do before your meeting

- 2.1 Ensure that your meeting is arranged to comply with the required time limits (see section 6 of the DFE's guidance)
- 2.2 Try to find three governors (not staff governors) who have no prior knowledge of the incident, pupil, victims (if any) or family
- 2.3 Arrange your meeting on a day and time which is convenient for;

- The parents
- The Headteacher
- The representative of the Local Authority [If you are an Academy Trust although you are not obliged to invite a LA rep to your meeting you may wish to consider doing so as they can advise on procedural matters and give information about what is considered to be good practice across the city]

2.4 Ask the school to arrange for the meeting to take place in a room which can comfortably accommodate all the parties and if possible, arrange for a separate waiting room for the parents. Ask for water to be supplied in the meeting.

2.5 Make sure that you and the school allow sufficient time for the meeting so that all the parties feel that they have had a fair hearing and also for your decision making after the meeting. Typical meetings run for at least two hours and with a pre-meeting beforehand and decision making after, you will find that you will need at least half a school day. Don't be rushed.

2.6 Appoint a Clerk to attend the meeting who will take the minutes of the meeting and also a note of your decision making processes, reasons and voting afterwards. The Clerk should also be able to assist you in writing your letter to the parents. As both the minutes and the letter will become critical pieces of evidence at any IRP hearing the services of a professional clerk would be invaluable. Governor Support Section can provide such a service.

2.7 Ask the school for the written evidence well in advance of the hearing. You should expect to receive:

- The Headteacher's statement of Case which should include a record of the investigatory steps taken
- Behaviour Policy and any other relevant policy
- Witness statements
- Details of the pupil's SEN/disability/ entitlement to Free School Meals / ethnic background (if relevant)
- Individual education Plans, Support Plans, Common Assessment Framework forms
- Behaviour Logs from SIMS or similar

2.8 This information and evidence together with a list of attendees should be circulated to all parties at least 5 school days before the hearing. This is your hearing so don't be afraid to chase things up.

2.9 As the GBDC you are responsible for ensuring that any reasonable adjustments have been made to enable people to attend and contribute. You should also be asking your Headteacher what steps they have taken to enable and encourage the excluded pupil to attend, if only for 5 or 10 minutes, so that you can hear the "pupil voice".

2.10 Do not be tempted to have an informal chat with the Headteacher or a parent or representative about the circumstances of the exclusion outside the meeting. Any pre-meeting discussions that you hold as the GBDC should be minuted by your clerk.

2.11 Carefully read through the evidence and the DFE Guidance in advance of the meeting, making a note of any issues that come to mind.

3. The role of the Chair

- 3.1 To arrange a pre-meeting with your GBDC colleagues to discuss the issues highlighted from reading the papers and the DFE Guidance and to decide how those issues can be clarified at the meeting
- 3.2 To ensure that all parties understand the role of the GBDC, what its powers are, how the hearing will be conducted and how decisions will be made. (See the separate document “Best Practice Guidance on the Procedure at the GBDC” to guide the Chair through the hearing.)
- 3.3 To manage the hearing in a way that enables and allows a full and proper participation by the parties but uses time effectively by curtailing repetitious arguments
- 3.4 Should one of the parties be unable to attend, to ensure that the case is properly considered in accordance with both the Best Practice Guidance and the principles of natural justice
- 3.5 To deal promptly with improper conduct from any party
- 3.6 To maintain a balance between formality and informality (particularly for the parents) whilst still having effective control of the proceedings
- 3.7 Recognise when to seek legal and procedural advice from the Clerk, LA rep or other sources (Legal Services)
- 3.8 Take the lead in establishing and identifying key facts and testing the Headteacher’s and the parent’s case but also encourage the participation and active questioning by governor colleagues
- 3.9 Properly consider the sufficiency and weight of the evidence
- 3.10 Take the lead in the decision making process and actively encourage and support governor colleagues to express their views and contribute
- 3.11 Ensure that a clear and final decision is reached on each issue and that the decision and the reasons are agreed and recorded before moving on to the next issue
- 3.12 Ensure that the minutes accurately reflect the evidence heard and the discussions and voting
- 3.13 Work with the Clerk to draft the letter to parents without delay (there is no guidance as to what this actually means but the old guidance stipulated that the letter had to be sent out within one school day)

4. After the GBDC Hearing – How to reach a decision as to whether or not to reinstate the excluded pupil

4.1. The GBDC must consider:

- The interests and circumstances of the excluded pupil including the circumstances in which the pupil was excluded

And

- Have regard to the interests of other pupils and people working in the school

And carry out a balancing exercise.

Identify the factors you have taken in to account and where the balance lies and why.

- 4.2. Did the HT exclude [permanently as a last resort]
- in response to a serious one-off incident or persistent breaches of the school's behaviour policy?

Identify the School Policies relied on and identify those sections that you are satisfied were breached

- And was the Headteacher satisfied that would allowing the excluded pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school?

Make a note of the harm and where you felt that the balance of risk should lie

4.3. Then consider:

- a. Any representations from the parents, HT and LA ;

Was anything said that you felt was particularly persuasive or relevant? If so, make a note of what this was.

- b. On the balance of probabilities (i.e. is it more likely than not) did the pupil do what he/she is alleged to have done?

i Are you more certain than not of the pupil's guilt?

ii If so, what evidence did you take in to account?

iii Was there evidence from more than one source? [If not and it is one person's word against another's think carefully about whose version of events you prefer and why]

iv Was the evidence of the pupil's involvement in the incident/s persuasive and if so why? If not, why not?

4.4 Are you satisfied that the decision of the HT was in line with the principles of administrative law:-

- Lawful
- Rational
- Reasonable

- Fair
- Proportionate

4.4.a Was the decision lawful?

- i Was it for a disciplinary reason – have you identified a breach of the behaviour policy? [The HT can only exclude for a disciplinary reason]
- ii Did the HT comply with any Equalities duties (if the pupil has a disability did the HT have regard to the need to make reasonable adjustments?)
- iii Did the HT send the pupil home to ‘cool off’ without following the necessary procedures and completing the necessary paperwork? **If so, this is an unlawful exclusion. Seek clarification from the LA rep.**
- iv Did the HT comply with any SEN duties or responsibilities to a Looked after Child (LAC)?
 - HT should avoid permanently excluding any pupil with a statement of SEN/LAC
 - What additional support/alternative placement did the HT consider?
- v Is the pupil on Free School Meals or from an ethnic minority?
- vi What additional support did the HT put in place to identify and address the pupil’s needs to reduce the risk of exclusion?
- vii In your view was it sufficient? Why?

4.4.b Was the decision rational?

- i. Was the decision made by the HT a cool, calm and collected response and not made in the heat of the moment?
- ii. If the HT first gave a fixed period exclusion pending a full investigation did they warn the parents that the investigation could result in a permanent exclusion?
- iii. Did the HT only take in to account relevant factors (behaviour) and not irrelevant factors e.g. academic record, attendance, behaviour of parents? If so, what was the impact upon the decision?
- iv. Was the decision justified on the evidence and the severity of the incident/s?

- v. Was the decision consistent with the Behaviour Policy and any other policy?

4.4.c Was the decision reasonable?

- i. Would another HT, acting reasonably, have made a similar decision in similar circumstances?
- The LA rep can assist by giving examples of practice across the city.

4.4.d Was the decision fair?

- i. If the pupil is from a vulnerable group what extra support was in place? Was it sufficient or could the school have done more? If so what?
- ii. Did the HT take in to account any contributing factors e.g bullying, challenging home circumstances, mental health issues? How were they taken into account?
- iii. Did the HT get the pupil's version of events before the decision was made? If not, why?
- iv. Has the pupil been treated fairly compared to how another pupil involved in the same or a similar incident has been treated?

4.4.e Was the decision proportionate?

- i. Did the punishment fit the crime?
- ii. What early intervention measures were in place to address underlying causes of disruptive behaviour?
- iii. In the case of multiple exclusions, were they an effective sanction?

4.4.f Are you satisfied that the HT carried out a thorough investigation?

- i. Did they keep a written record of actions taken (and copies of written statements and records made by other members of staff) including any interview with the pupil concerned?
- ii. Did they obtain written, signed and dated witness statements?
- iii. Did they consider all the available evidence?

- iv. Did they consult with anyone else?

4.4.g Are you satisfied that the HT has not changed the reason for the exclusion?

If the letter to parents from the Headteacher refers to a specific “one-off” serious incident they can not come to your hearing and present the case as if there has been lengthy history of misbehaviour.

5. What decisions can you reach?

The GBDC may either

- uphold the exclusion or
- direct the pupil's reinstatement, either immediately or by a particular date

If reinstatement is not practical (either because the pupil is back in school following a fixed period exclusion or the parent doesn't want the pupil to return) you must still consider whether the Headteacher's decision was reasonable based on the evidence.

6. After the hearing

It is usual practice for the Chair of the GBDC to write the letter with assistance from the Clerk. However, it is the clerk's responsibility to notify the parents, Headteacher and LA in writing and without delay stating the reasons for the decision **in detail**. The letter should be approved by the Chair before it is sent.

Ideally the minutes should be approved by the GBDC prior to the letter being sent, but this may not always be achievable given the obligation to write the letter 'without delay'. The minutes should however be approved by the GBDC as soon as possible after the hearing whilst the evidence is still fresh in your minds so that if any of the parties ask for a copy they can be made available.

A standard model letter has been produced which contains the prescribed information which must be provided to parents. This letter is available from the Inclusion Service, Governor Support Team and Legal Services.

The outcome of the consideration should be added to the pupil's school record for future reference.

The parents have 15 school days from notice being given to them of your decision to request the LA or the Academy Trust to arrange for an independent review panel hearing to review the GBDC decision not to reinstate a permanently excluded pupil.