

NYCC Guidance on Exclusion from Maintained Schools, Academies and Pupil Referral Units

September 2017

Introduction

The DfE has published revised guidance on exclusions and the statutory requirements head teachers, governing bodies and other relevant professionals 'must have regard' for when excluding a child or young person from a school, Academy or pupil referral unit, either as a fixed term or permanent exclusion.

The Local Authority fully expects schools to act in accordance with this DfE guidance, particularly in reference to:

Ethos

Whilst recognising that exclusion can have its place within the continuum of consequences to challenging behaviour; it should always be seen as a serious response and, in the case of fixed term exclusion, an opportunity to organise additional interventions and provision which can then form a key part of a reintegration strategy. Any decision to exclude a pupil **must be lawful, reasonable and fair and as such, schools should never undertake 'casual' or unlawful exclusions such as sending pupils home to 'cool off' for part of a day. Similarly, the threat of exclusion must never be used to influence parents to remove their child from the school.**

Permanent exclusion should only be used as a last resort in response to serious or persistent breaches of the school's behaviour policy; and where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school. Only the headteacher can exclude a pupil and this must be on disciplinary grounds. The headteacher must also take account of their legal duty of care when sending a pupil home following exclusion. The Department of Education stress that permanent exclusions 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 pupil to remain in school would seriously harm the education or welfare of the pupils or others in the school.

Preventative approaches

Where persistent patterns of behaviour lead to repeated fixed term exclusions or the potential risk of permanent exclusion, the Local Authority would expect schools to work collaboratively, discussing the pupil's needs with their area Education Development Adviser: Social, Emotional & Mental Health (SEMH) and/or with their local Behaviour & Attendance Collaborative (secondary) or Enhanced Mainstream School (SEMH) (primary). Such collaboration should focus on exploring the range of solutions open to the school in managing the behaviour of the pupil, for example through risk assessment and individual provision mapping in order to plan school-based strategies and interventions, and/or referral for support from the Collaborative or EMS. Consideration should also be made as to whether or not use of the **CAF** process would be appropriate.

The Local Authority would also request that schools make contact as soon as any permanent exclusion is imminent in order to discuss the specifics of the individual case and to explore whether any alternative outcomes may be possible. Headteachers should also be mindful that where a pupil has received multiple exclusions or is approaching the legal limit of 45 school days of fixed-period exclusion in an academic year, whether exclusion is providing an effective sanction.

Vulnerable pupils

As previously stated, exclusion should always be regarded as a serious consequence or final resort, and this is especially pertinent when the pupil is from certain vulnerable groups,

such as being a child looked after or having a disability or special educational need. In such instances it is important that the school contacts the LA and takes particular care to examine the DfE guidance, cross-referencing for that particular need as well as adhering to all statutory duties under the Equality Act (2010). Schools should also be mindful of any emerging patterns or trends for pupils from specific vulnerable groups or with other protected characteristics. It could also be helpful to discuss strategic planning with any relevant Enhanced Mainstream School (EMS) or MEA Hub School.

Procedural Fairness

The Local Authority expects schools to pay due regard to the procedural requirements and timescales outlined within the DfE guidance and summarised in the additional tables and checklists produced by NYCC (see appendices).

Body of evidence (Civil Statement of Proof)

The school needs to be clear that, on the balance of probabilities, the pupil actually did do what he or she is being accused of. It is essential that the pupil being excluded has the opportunity to provide their version of events and that this is recorded as a statement. This will also involve schools in carrying out a thorough investigation and in taking witness statements from both adults and other pupils involved or present.

A reasonable and proportionate response

Schools should ensure that any exclusion is reasonable and proportionate with regard to the incident and/or behaviour of the pupil. Again, contact with the Local Authority can act to confirm how other schools have responded to similar incidents or behaviours. Schools should also consider whether there were any causal or mitigating factors that should be taken into consideration when deciding to exclude.

Involving excluded pupils and their parents/carers

It is important that the school continues to try to engage with the excluded pupil and their family throughout the exclusion process, that they are given the opportunity to voice their perspective, invited to any meetings and know how to access additional support, such as Parent Partnership officers, to assist them through the process. This will also include, as appropriate, the right to progress to an Independent Review Panel and information on their rights regarding requesting the involvement of an SEN expert (for Permanent Exclusions).

New sections in the Guidance

The DfE, in the September 2017 guidance, have added a parts to the Guidance:-

Para 86. Guidance to schools on marking attendance registers following exclusion

Annex B - A non-statutory guide for head teachers

Including sections on:-

Exclusion process for head teachers, academy principals and teachers in charge of pupil referral units

- Early Intervention

- You should have a system in place to ensure you are aware of a pupil showing persistent poor behaviour or not responding to low level sanctions.
- You should ask the governing board whether it has a clear process in place for considering reinstatement following an exclusion.

Taking the decision

- You must take the decision whether to exclude (you cannot delegate this).
- You must inform parents of the exclusion.
- If the exclusion is permanent or takes the pupil's total school days of exclusion over five in a term or prevents them from taking a public examination or national curriculum test, you must inform the governing board and local authority of the duration of the exclusion, or that it is permanent, and the reasons for it.
- You should ask the chair of the governing board whether there are clear processes in place to comply with its legal duty to arrange suitable full-time educational provision for pupils of compulsory school age from the sixth consecutive school day of fixed-period exclusion.
- You should ask the chair of the governing board whether there are clear processes in place for considering exclusions.
- Where applicable, the governing board must consider whether the pupil should be reinstated and inform parents of the outcome of its consideration.
- Independent review panel

Post-exclusion action

- When removing a pupil from the school roll, you should remind the governing board that they must ensure this is done under the circumstances prescribed by the Education (Pupil Registration) (England) Regulations 2006, as amended.
- If applicable, you should check that the pupil's name has been removed from the school roll at the appropriate time.

Annex C – A guide for parents/carers

Parent/Carer Guide on Exclusion

The Constitution of governing bodies of maintained schools.

**New statutory guidance for governing bodies of maintained schools and local authorities in England.
August 2017.**

The full document is available at www.gov.uk/government/publications

Key Changes in this update

- Additional material on the Governance database.
- New guidance on the power to remove elected and staff governors.

1. New information on the governor data base: Section 35 page 12.

Further to section 538 of the Education Act 1996, governing bodies are now required to provide the Secretary of State with whatever information she requires for the purpose of the exercise of her functions in relation to education. This means that governing bodies must provide to the Secretary of State for Education certain details they hold, as volunteered by their governors, through EduBase* and keep the information up to date. *Governing bodies are advised to make it clear that section 538 of the Education Act 1996 does not require governors to supply information to the governing body. It is also advised that governors are informed that information is collected on a voluntary basis but that the governing body is required to share what it holds with the Secretary of State for Education.*

The data provided will enable schools and the department to identify, more quickly and accurately, individuals who are involved in governance, and who govern in more than one context. The information requested says nothing in itself about a person's suitability to govern. However, it is essential information for the department to be able to uniquely identify an individual and in a small number of cases conduct checks to confirm their suitability for this important and influential role.

The information to be provided is set out in a message to all schools published on 1 July 2016 on GOV.UK.

**EduBase will be replaced by GIAS (Get information About Schools) system in 2017.*

2. Removal of elected governors: Section c.5 – pages 23/24

All categories of governors can now be removed from office for breaches serious of the code of conduct, this includes elected governors. Examples which could give rise to removal are where:

(a) there have been repeated grounds for suspension¹⁴;

(b) there has been serious misconduct. Governing bodies should decide what constitutes serious misconduct based on the facts of the case. However, it is expected that any actions that compromise the Nolan principles, if sufficiently serious, would be considered in scope of this reason for removal.

(c) a governor displays repeated and serious incompetence; for example where an elected governor is unwilling or unable, despite all appropriate support, to develop the skills to contribute to effective governance; or where attendance is so irregular that the governor is unable to make any meaningful contribution to the work of the board.

(d) the governor has engaged in conduct aimed at undermining fundamental British values of democracy, the rule of law, individual liberty, mutual respect, and tolerance of those with different faiths and beliefs; and/or;

(e) the actions of the governor are significantly detrimental to the effective operation of the governing body, distracting it from its core strategic functions; and/or the actions of a governor interferes with the operational efficiency of the school thereby wasting a significant amount of headteacher and /or senior leadership time.

Foundation, ex-officio foundation, partnership and co-opted governors can all be moved by the organisation or person named on the instrument of government. LA governors can be removed by the local authority that nominated them.

Any person removed from a governing body will be disqualified from serving on any governing body for a period of 5 years.

The five year disqualification term for removal reflects the expectation that the power to remove an elected governor will only be used in exceptional and serious circumstances (and such seriousness will depend on the facts of the case).

NYCC Governance Unit is currently developing a procedure to remove governors and this will be made available for all schools as soon as possible. If you require urgent support on this matter please get in touch the Governance Unit for advice.

3. Section 16:

A code of conduct should be maintained and communicated to all prospective governors to set clear expectations of the governors' role and behaviour. Once approved by the governing body, the code of conduct should apply to all governors.

4. Section 20:

It is advised that governing bodies make everyone involved in governance aware of, and secure their agreement to 'The 7 principles of public life', as set out by Lord Nolan.

5. Section 21:

It is advised the governing body makes its members aware of joint guidance agreed between the National Governance Association, National Association of Head Teachers, Association of School and College Leaders and the Local Government Association: What governing boards should expect from school leaders and what school leaders should expect from governing boards.

6. The disqualification list has been amended to include the following:

A person is disqualified from holding or continuing to hold office as a governor of a school if in summary that person:

- has been removed from office as an elected governor within the last five years

Model Procedures:

Code of Conduct

Legislation, policies and procedures



Need advice?

For advice on any issue, Gold members have access to GOLDline legal advice 9–5pm weekdays. Find out more T: 0121 237 3782 www.nga.org.uk/goldline

National Governors' Association

The National Governors' Association (NGA) is an independent charity representing and supporting governors, trustees and clerks in maintained schools and academies in England. The NGA's goal is to improve the well-being of children and young people by increasing the effectiveness of governing boards and promoting high standards. It does this by providing information, guidance, research, advice and training. It also works closely with, and lobbies, UK government and educational bodies, and is the leading campaigning national membership organisation for school governors and trustees.

The NGA online Guidance Centre is the information hub for governors. It supports you in your role as a governor, giving you access to up to date guidance and advice covering all aspects of school governance, including finance; staffing; Ofsted; curriculum; special educational needs; legislation and school improvement.

Practical governance resources include sample documents; templates; checklists; information summaries; insights; case studies and much more.

To join NGA and receive regular updates, contact:

T: 0121 237 3780 | E: membership@nga.org.uk | www.nga.org.uk

Code of Conduct for School Governing Boards

2016 Version

This code sets out the expectations on and commitment required from school governors, trustees and academy committee members in order for the governing board to properly carry out its work within the school/s and the community. It can be amended to include specific reference to the ethos of the particular school. Unless otherwise stated, 'school' includes academies, and it applies to all levels of school governance.

This code can also be tailored to reflect your specific governing board and school structure, whether that is as a maintained school or academy, either as a single school or group of **Schools**. Where multiple options are given, i.e. lead executive/headteacher and governor/trustee/academy committee member, please amend to leave the option relevant to your governing board.

The governing board has the following core strategic functions:

Establishing the strategic direction, by:

- Setting the vision, values, and objectives for the school(s)/trust
- Agreeing the school improvement strategy with priorities and targets
- Meeting statutory duties

Ensuring accountability, by:

- Appointing the lead executive/headteacher
- Monitoring progress towards targets
- Performance managing the lead executive/headteacher
- Engaging with stakeholders
- Contributing to school self-evaluation

Ensuring financial probity, by:

- Setting the budget
- Monitoring spending against the budget
- Ensuring value for money is obtained
- Ensuring risks to the organisation are managed

As individuals on the board we agree to the following:

Role & Responsibilities

- We understand the purpose of the board and the role of the lead executive/headteacher.
- We accept that we have no legal authority to act individually, except when the board has given us delegated authority to do so, and therefore we will only speak on behalf of the governing board when we have been specifically authorised to do so.
- We accept collective responsibility for all decisions made by the board or its delegated agents. This means that we will not speak against majority decisions outside the governing board meeting.
- We have a duty to act fairly and without prejudice, and in so far as we have responsibility for staff, we will fulfil all that is expected of a good employer.
- We will encourage open government and will act appropriately.
- We will consider carefully how our decisions may affect the community and other schools.
- We will always be mindful of our responsibility to maintain and develop the ethos and reputation of our school/group of schools. Our actions within the school and the local community will reflect this.
- In making or responding to criticism or complaints we will follow the procedures established by the governing board.
- We will actively support and challenge the lead executive/headteacher.

Commitment

- We acknowledge that accepting office as a governor/trustee/academy committee member involves the commitment of significant amounts of time and energy.

- We will each involve ourselves actively in the work of the governing board, and accept our fair share of responsibilities, including service on committees or working groups.
- We will make full efforts to attend all meetings and where we cannot attend explain in advance why we are unable to.
- We will get to know the school/s well and respond to opportunities to involve ourselves in school activities.
- We will visit the school/s, with all visits arranged in advance with the lead executive/headteacher and undertaken within the framework established by the governing board.
- We will consider seriously our individual and collective needs for induction, training and development, and will undertake relevant training.
- We accept that in the interests of open government, our full names, date of appointment, terms of office, roles on the governing board, attendance records, relevant business and pecuniary interests, category of governor and the body responsible for appointing us will be published on the school's website.
- In the interests of transparency we accept that information relating to governors/trustees/academy committee members will be collected and logged on the DfE's national database of governors (Edubase).

Relationships

- We will strive to work as a team in which constructive working relationships are actively promoted.
- We will express views openly, courteously and respectfully in all our communications with other governors/trustees/academy committee members and the clerk to the governing board.
- We will support the chair in their role of ensuring appropriate conduct both at meetings and at all times.
- We are prepared to answer queries from other board members in relation to delegated functions and take into account any concerns expressed, and we will acknowledge the time, effort and skills that have been committed to the delegated function by those involved.
- We will seek to develop effective working relationships with the lead executive/headteacher, staff and parents, the trust, the local authority and other relevant agencies and the community.

Confidentiality

- We will observe complete confidentiality when matters are deemed confidential or where they concern specific members of staff or pupils, both inside or outside school.
- We will exercise the greatest prudence at all times when discussions regarding school/trust business arise outside a governing board meeting.
- We will not reveal the details of any governing board vote.

Conflicts of interest

- We will record any pecuniary or other business interest (including those related to people we are connected with) that we have in connection with the governing board's

business in the Register of Business Interests, and if any such conflicted matter arises in a meeting we will offer to leave the meeting for the appropriate length of time. We accept that the Register of Business Interests will be published on the school/trust's website.

- We will also declare any conflict of loyalty at the start of any meeting should the situation arise.
- We will act in the best interests of the school as a whole and not as a representative of any group, even if elected to the governing board.

Breach of this code of conduct

- If we believe this code has been breached, we will raise this issue with the chair and the chair will investigate; the governing board will only use suspension/removal as a last resort after seeking to resolve any difficulties or disputes in more constructive ways.
- Should it be the chair that we believe has breached this code, another governing board member, such as the vice chair will investigate.

The Seven Principles of Public Life

(Originally published by the Nolan Committee: The Committee on Standards in Public Life was established by the then Prime Minister in October 1994, under the Chairmanship of Lord Nolan, to consider standards of conduct in various areas of public life, and to make recommendations).

Selflessness - Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity - Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity - In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability - Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness - Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty - Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership - Holders of public office should promote and support these principles by leadership and example.

Adopted by the governing board of [name of school] on [date].

Disqualification Declaration September 2017

“The Constitution of governing bodies of maintained schools” Statutory guidance for governing bodies of maintained schools and local authorities in England. August 2017

All the grounds for disqualification apply also to associate members except that associate members can be registered pupils at the school and can be under 18. Please read the following carefully and sign the form at the end if you comply with the following criteria:

General grounds

Registered pupils cannot be governors.

A governor must be aged 18 or over at the time of election or appointment.

A person cannot hold more than one governor post at the same school at the same time.

Grounds that apply to particular categories of governor

A person is disqualified from being a **parent** governor if they are an elected member of the LA or paid to work at the school for more than 500 hours (i.e. for more than one-third of the hours of a full-time equivalent) in any consecutive twelve month period (at the time of election or appointment).

A person is disqualified from being a **local authority governor** if they are eligible to be a staff governor at the school.

A person is disqualified from being a **partnership governor** if they are:

- a parent of a registered pupil at the school;
- eligible to be a staff governor at the school;
- an elected member of the LA; or
- employed by the local authority in connection with its education functions.

Grounds that arise because of particular failings or actions on the part of the governor

A person is disqualified from being a governor of a particular school if they have failed to attend the meetings of the governing body of that school for a continuous period of six months, beginning with the date of the first meeting they failed to attend, without the consent of the governing body. This does not apply to the headteacher or to foundation governors appointed by virtue of their office.

A governor at the school who is disqualified for failing to attend meetings is only disqualified from being a governor of any category at the school during the twelve month period starting on the date on which they were disqualified.

A person is disqualified from holding or continuing to hold office if that person:

- is the subject of a bankruptcy restrictions order or an interim order, debt relief restrictions order, an interim debt relief restrictions order or their estate has been sequestrated and the sequestration has not been discharged, annulled or reduced is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986, a disqualification order under Part 2 of the Companies (Northern Ireland) Order 1989, a disqualification undertaking accepted under the Company Directors Disqualification (Northern Ireland) Order 2002, or an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order)

- has been removed from the office of charity trustee or trustee for a charity by the Charity Commission or Commissioners or High Court on grounds of any misconduct or mismanagement, or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 from being concerned in the management or control of any body
 - is included in the list of teachers or workers considered by the Secretary of State as unsuitable to work with children or young people
 - is barred from any regulated activity relating to children
 - is subject to a direction of the Secretary of State under section 128 of the Education and Skills Act 2008
 - is disqualified from working with children or from registering for child-minding or providing day care
 - is disqualified from being an independent school proprietor, teacher or employee by the Secretary of State
 - has been sentenced to three months or more in prison (without the option of a fine) in the five years before becoming a governor or since becoming a governor
 - has received a prison sentence of two years or more in the 20 years before becoming a governor
 - has at any time received a prison sentence of five years or more
 - has been fined for causing a nuisance or disturbance on school premises during the five years prior to or since appointment or election as a governor
 - refuses a request by the clerk to make an application to the Criminal Records Bureau for a criminal records certificate.
- Has been removed from office as an elected Governor within the last five years
 Anyone proposed or serving as a governor who is disqualified for one of these reasons must notify the clerk to the governing body.

Publication of Governor's Details and the Register of Interests

24. Governors hold an important public office and their identity should be known to their school and wider communities. Governing bodies should therefore publish on their website information about their members. The information they should publish should, as a minimum include for each governor:

- their name;
- their category of governor;
- which body appoints them;
- their term of office;
- the names of any committees the governor serves on; and
- details of any positions of responsibility such as chair or vice-chair of the governing body or a committee of the governing body.

25. Governing bodies should also publish this information for associate members, making clear whether they have voting rights on any of the committees they serve on.

26. Governing bodies are under a duty to publish on their website their register of interests. The register should set out the relevant business interests of governors and details of any other educational establishments they govern. The register should also set out any relationships between governors and members of the school staff including spouses, partners and relatives.

27. Governing bodies should make it clear in their code of conduct that this information will be published on their governors and, where applicable, their

associate members. Any governor failing to reveal information to enable the governing body to fulfil their responsibilities may be in breach of the code of conduct and as a result be bringing the governing body into disrepute. In such cases the governing body should consider suspending the governor.

28. Governing Bodies must also provide certain information it holds to the Secretary of State through Edubase (or the Get information About Schools (GIAS) system which will replace Edubase this calendar year

The Constitution of governing bodies of maintained schools August 2017 added the following requirements for all governors and governing bodies:

Governors, with the exception of the Head teacher, can be disqualified if:

- they breach the code of conduct,
- where there have been repeated grounds for suspension,
- where a governor displays repeated and serious incompetence,
- has engaged in conduct aimed at undermining fundamental British values,
- where the actions of the governor are significantly detrimental to the effective operation of the governing body or
- there was been serious misconduct

Responsibility for removal of Governor:

Foundation Governors may only be removed from office by the person that appointed them. The governing body may remove an ex-officio foundation governor if requested by the person named in the instrument of government.

Local authority governors may be removed from office by the local authority.

The governing body may remove co-opted and partnership governors.

The governing body may also remove an appointed or an elected parent of staff governor.

Governing bodies are expected only to exercise the power to remove an elected governor in exceptional circumstances where the actions or behaviour of the elected governor warrants removal rather than suspension.

I declare that I have read and understood the above and I am not disqualified from serving as a school governor (or an Associate Member) in accordance with the above criteria. I also declare I have read the publication of governor's details and register of interest requirements and I agree to the publication on the school website :

Name.....

Signature.....