

Suspension and Exclusion Policy

OUR SCHOOL PRAYER:

*What does the **Lord** ask of you?*

To act justly, to love mercy and to walk humbly with your God.

Micah 6vs.8

Contents

Statement of intent

1. Legal framework
2. Roles and responsibilities
3. Grounds for exclusion
4. The headteacher's power to exclude
5. Factors to consider when suspending or excluding a student
6. Duty to inform parents/carers
7. Duty to inform the governing board and LA
8. Arranging education for suspended and excluded students
9. Considering suspensions and exclusions
10. Reaching a decision
11. Notification of considered suspensions and exclusions
12. Removing excluded students from the school register
13. Independent Review Panel
14. Appointing a SEND Expert
15. The role of a SEND expert
16. Appointing a clerk
17. The role of the clerk
18. The duties of the Independent Review Panel members in the conduct of an independent review panel
19. Reconsidering reinstatement following a review
20. Criminal investigations
21. Training requirements
22. Monitoring and review

Appendix

- a) Flowchart for reviewing the headteacher's suspension or exclusion decision

Statement of intent

In our school, our Christian vision shapes all we do. All members of the school community are committed to upholding the St Michael's Church of England Christian values:

- to show love, care, and kindness to all in our community
- to value what we have and to share with others
- to enable everyone to achieve their full potential

At St Michael's Church of England High School, we understand that good behaviour and discipline is essential for promoting a high quality of education.


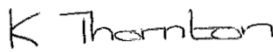

Amongst other disciplinary sanctions, the school recognises that suspension and exclusion of students may be necessary where there has been a serious breach, or consistent breaches, of the school's Behaviour Management Policy. Suspending or excluding a student may also be required in instances where allowing the student to remain in school would be damaging to the education and welfare of themselves or others; in all cases, suspending or excluding students should only be used as a means of last resort.

The school has created this policy to clearly define the legal responsibilities of the headteacher, governing board and local authority (LA) when responding to student suspensions and exclusions, in order to ensure that they are dealt with both fairly and lawfully, and in line with DfE statutory guidance. This policy also aims to secure a student's right to education despite having been suspended or excluded, by ensuring that appropriate arrangements are in place.

A **"suspension"** is defined as the temporary removal of a student from the school for behaviour management purposes. A student may be suspended for one or more fixed periods, up to a maximum of 45 school days in a single academic year. A suspension does not have to be for a continuous period.

An **"exclusion"** is defined as the permanent removal of a student from the school, 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 students or staff in the school.

Signed by:

 _____	Headteacher	Date: <u>22.09.2022</u>
 _____	Co-Chair of governors	Date: <u>22.09.2022</u>
 _____	Co-Chair of governors	Date: <u>22.09.2022</u>

Date of approval	13 th July 2017
Date reviewed	22 nd September 2022
Review date	March 2025

1. Legal framework

1.1. This policy has due regard to the related statutory legislation, including but not limited to, the following:

- Education Act 1996
- Education Act 2002
- Education and Inspections Act 2006
- The Education (Provision of Full-Time Education for Excluded Students) (England) Regulations 2007
- Equality Act 2010
- The School Discipline (Student Exclusions and Reviews) (England) Regulations 2012
- The European Convention on Human Rights (ECHR)

1.2. This policy also has due regard to statutory and non-statutory guidance, including, but not limited to, the following:

- DfE (2015) 'Special educational needs and disability code of practice: 0 to 25 years'
- DfE (2016) 'Behaviour and discipline in schools'
- DfE (2017) 'Exclusion from maintained schools, academies and student referral units in England'
- DfE (2018) 'Mental health and behaviour in schools'

1.3. This policy will be implemented in conjunction with the following school policies and procedures:

- Behaviour Management Policy
- Anti-Bullying Policy
- Code of Conduct Agreement
- Violence Towards Staff Policy
- Special Educational Needs and Disabilities (SEND) Information
- Mental Health and Wellbeing Policy
- Child Protection and Safeguarding Policy

2. Roles and responsibilities

2.1 The LA is responsible for:

- having due regard to the relevant statutory guidance when carrying out its duties in relation to the education of LAC.
- arranging suitable full-time education for any student at compulsory school age excluded permanently, in coordination with the school.
- reviewing and reassessing students' needs in consultation with their parents where they have an EHC plan and are excluded permanently, with a view to identifying a new placement.
- arranging for an independent review panel hearing to review the decision of the governing board not to reinstate a permanently excluded student where required.
- arranging the hearing without delay at a time, date, and venue convenient for all parties.
- ensuring the independent review panel consists of three or five members as appropriate, which represent the required categories.
- ensuring all panel members and the clerk have received training within the two years prior to the date of the review.

- if requested by parents, appointing a SEND expert to attend the panel, and covering the associated costs of this appointment.

2.2 The governing board is responsible for:

- providing information to the Secretary of State and LA about any suspensions and exclusions within the last 12 months.
- arranging suitable full-time schoolwork for any student at compulsory school age who is suspended.[confused about this statement.
- considering parents' representations about suspensions and exclusions within 15 school days of receiving notice if the appropriate requirements are met.
- where a suspension or exclusion would result in a student missing a public examination or test, considering the suspension or exclusion before this date.
- considering whether it would be appropriate for a student to be permitted onto the school premises to sit the public examination or test.
- arranging the representation meeting at a time and date convenient to all parties, but in compliance with the statutory time limits.
- adhering to its responsibilities to consider the reinstatement of students.
- considering the interests and circumstances of the suspended or excluded student, including the circumstances in which they were suspended or excluded, and have due regard to the interests of others at the school.
- using the civil standard of proof (based on the 'balance of probabilities', it is more than likely that the fact is true) when establishing the facts relating to a suspension or exclusion.
- ensuring clear minutes are taken of the representation meeting.
- noting the outcome of the representation meeting on the student's education record, along with copies of relevant papers for future reference.
- notifying the student's parents, the headteacher and LA of its decision and the reasons for it, without delay.
- appointing a clerk to provide advice to the relevant panel and parties to the review on procedure, law and statutory guidance on suspensions and exclusions. **NB:** this is not statutory. Where not appointed, the responsibilities should be assumed by the LA.
- where appropriate, informing parents of where to apply for an independent review panel.
- informing parents of relevant sources of information.
- ensuring a student's name is removed from the school admissions register, where appropriate.
- reconvening within 10 school days to reconsider reinstatement of a student where directed to do so by the suspensions and exclusions review panel.

2.3 The clerk to the suspensions and exclusions review panel is responsible for:

- Informing the appropriate individuals that they are entitled to:
 - Make written representations to the panel.
 - Attend the hearing and make oral representations to the panel.
 - Be represented.
- Circulating copies of relevant papers at least five school days before the review to all parties.
- Giving all parties details of those attending and their role, once the position is clear.
- Attending the review and ensuring that minutes are produced in accordance with instructions from the panel within the timeframe of the policy.
- **NB:** this is not statutory. Where not appointed, the responsibilities should be assumed by the LA.

2.4 The headteacher is responsible for:

- implementing good levels of discipline to ensure all students can benefit from the opportunities provided by education and to minimise potential suspensions and exclusions.
- applying the civil standard of proof when establishing the facts in relation to a suspension or exclusion.
- complying with their statutory duties in relation to students with SEND when administering the suspension or exclusion process, as outlined in the Special Educational Needs and Disabilities (SEND) Information.
- considering any contributing factors that are identified after an incident of poor behaviour has occurred, e.g., if a student has suffered bereavement, experienced bullying or has a mental health issue.
- considering the use of a multi-agency assessment for a student who demonstrates persistent disruptive behaviour.
- reviewing the effectiveness of suspensions and exclusions as sanctions, e.g., if a student has received multiple suspensions or is approaching the legal limit for suspensions in an academic year.
- considering what extra support may be needed to identify and address the needs of individual students, particularly those with SEND, those eligible for FSM, LAC, and those from certain ethnic groups.
- engaging effectively with parents in supporting the behaviour of students with additional needs.
- determining whether a student will be suspended or excluded on disciplinary grounds.
- withdrawing any suspensions or exclusions that have not been reviewed by the governing board, where appropriate.
- ensuring any decision to suspend or exclude is lawful, rational, reasonable, fair, and proportionate.
- complying with the requirements of the Equality Act 2010 when deciding whether to suspend or exclude a student.
- ensuring they have considered their legal duty of care when sending a student home following a suspension or exclusion.
- making the decision to suspend or exclude based on the evidence available at the time, regardless of any police investigation and/or criminal proceedings.
- notifying a student's parents without delay where the decision is taken to suspend or exclude the student, including the days on which the parents must ensure the student is not present in a public place at any time during school hours, as well as any other necessary information statutorily required.
- ensuring that all information provided to parents is clear and easily understood.
- notifying the governor responsible and LA of their decision to exclude a student where appropriate, as well as the student's home authority if required.
- notifying the governing board once per term of any exclusions in the headteacher's report to governors.
- organising suitable work for excluded students where alternative provision cannot be arranged.

3. Grounds for suspension or exclusion

- 3.1. The school will only exclude a student where it is absolutely necessary, and where all other possible disciplinary sanctions, as detailed in the school's Behaviour Management Policy, have failed to be successful, or a single serious incident has occurred.

3.2. The following examples of behaviour may underline the school's decision to suspend or exclude a student:

- any incident which poses a risk to other students or members of staff, e.g., bringing a weapon onto the premises
- any incidents which breach the law
- persistent and severe bullying
- verbal and physical abuse
- constant disruption
- a single, serious, and major incident, e.g., serious assault on another individual leading to injury

Students can be suspended on a fixed period basis, i.e., up to 45 school days within a year, or permanently excluded. Similarly, students can be permanently excluded following a suspension, where further evidence is presented. In all cases, the headteacher will decide whether a student will be subject to a suspension or an exclusion, depending on what the circumstances warrant.

3.3. As a voluntary aided school, the school has the power to direct a student off-site to improve his/her behaviour.

4. The headteacher's power to suspend and exclude

4.1. Only the headteacher has the power to exclude a student from the school and is able to decide whether either a suspension or exclusion is appropriate. Suspensions and exclusions will only be issued on disciplinary grounds.

4.2. The headteacher is able to suspend students where their behaviour is disruptive during lunchtime. All lunchtime suspensions will be counted as half of a school day.

4.3. The headteacher is also able to consider a student's disruptive behaviour outside of the school premises as grounds for suspension or exclusion, in accordance with the school's Behaviour Management Policy.

4.4. When sending a student home following any exclusion, the headteacher will ensure that they exercise their duty of care at all times and will always inform the parents/carers.

4.5. Any decision made to suspend or exclude a student will be lawful, proportionate, and fair, with respect to legislation relating directly to suspensions and exclusions and the school's wider legal duties, including the (ECHR). At all times, the headteacher will take into account their legal duties under The Equality Act 2010 and the 'Special educational needs and disability code of practice: 0 to 25 years', ensuring that they do not discriminate on any grounds, e.g., race, sex, or disability, and will not increase the severity of a student's suspension or exclusion on these grounds.

4.6. The headteacher will apply the civil standard of proof when responding to the facts relating to a suspension or an exclusion, i.e., that 'on the balance of probabilities' it is more likely than not that the facts are true.

4.7. The headteacher may withdraw any suspension or exclusion that has not already been reviewed by the governing board.

4.8. The headteacher will not issue any 'informal' or 'unofficial' suspensions or exclusions, e.g., sending a student home to 'cool-off', regardless of whether or not the parents/carers have agreed to this.

- 4.9. The headteacher will not use the threat of suspension or exclusion as a means of instructing parents/carers to remove their child from the premises.
- 4.10. All suspensions and exclusions will be formally recorded.

5. Factors to consider when suspending or excluding a student

- 5.1. When considering the suspension or exclusion of a student, the headteacher will:
- allow the student the opportunity to present their case once evidence has been collected
 - take into account any contributing factors that are identified after a case of poor behaviour has occurred, e.g., if the student's wellbeing has been compromised, or they have been subjected to bullying
 - take into consideration whether the student has received multiple exclusions or is approaching the legal limit of 45 excluded days per school year and whether exclusion is serving as an effective sanction
 - consider early intervention to address underlying causes of disruptive behaviour, including liaising with external agencies, to assess students who demonstrate consistently poor behaviour
- 5.2. The headteacher will consider what extra support may be available for vulnerable student groups whose suspension and exclusion rates are higher, to reduce their risk of suspension or exclusion, including the following:
- looked after children (LAC)
 - students eligible for free school meals
 - students with SEND
 - certain ethnic groups
- 5.3. The headteacher will consider avoiding excluding LAC students or students with an education, health, and care (EHC) plan.
- 5.4. Where any member of staff has concerns about vulnerable student groups and their behaviour, they will report this to the headteacher who may instigate a multi-agency assessment to determine whether the behavioural issues might be a result of educational, mental health or other needs and vulnerabilities. The full assessment procedures are outlined in the school's Mental Health and Wellbeing Policy.
- 5.5. Where SEND or SEMH issues are identified, the graduated response outlined in the school's Behaviour Management Policy, will be followed. If the student continues to endanger the physical or emotional wellbeing of other students or staff, despite exhausting the graduated response process, then suspension or exclusion may be considered. In accordance with the Equality Act 2010, under no circumstances will a student with identified SEND or SEMH issues be suspended or excluded before the graduated response process has been completed.
- 5.6. Where a student with SEND or SEMH issues is excluded because of a SEND- or SEMH-related need that could not be met at the school, detailed records will be kept highlighting that these students are closely tracked and showing that the school has a close relationship with the student's next destination.

5.7 The headteacher will work in conjunction with the parents/carers of any student with additional needs, in order to establish the most effective support mechanisms.

6. Duty to inform parents/carers

6.1. Following the headteacher's decision to suspend or exclude a student, they will inform the parents/carers, in person or by telephone, supported by email communication, of the period of the suspension, or permanency of the exclusion, and the reasons behind this.

6.2. The headteacher will inform the parents/carers in writing, (electronically if written permission has been received from the parents for notices to be sent this way) of the following:

- the reasons for the suspension or exclusion
- the length of the suspension or permanency of the exclusion
- their right to raise any representations about the suspension or exclusion to the governing board, including how the student will be involved in this and how the representations will be made
- their right to attend a meeting where there is a legal requirement for the governing board to consider the suspension or exclusion, and the fact that they are able to bring an accompanying individual
- the arrangements that have been made for the student to continue their education prior to the organisation of any alternative provision, or the student's return to school
- relevant sources of free, impartial information

6.3. Where the student is of compulsory school age, the headteacher will inform the parents/carers by the end of the afternoon session that:

- for the first five days of the suspension or exclusion (or until the start date of any alternative provision or the end of the suspension 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 justification and that parents/carers may receive a penalty fine if they fail to do so.

6.4. Where the headteacher has arranged alternative provision, they will also inform the parents/carers of the following:

- the start date for any provision of full-time education, including starting and finishing times
- the address at which the provision will take place
- any information necessary for the student to identify the person they should report to on the starting date

6.5. Where the headteacher is unable to provide information on alternative provision by the end of the afternoon session, they will provide the information in a subsequent written notice without further delay, and within 48 hours of the student beginning the provision.

6.6. If the alternative provision is due to begin before the sixth day of the suspension or exclusion, the headteacher is able to give less than 48 hours of notice, with parental consent.

6.7. If the headteacher has decided to suspend the student for a further fixed period following their original suspension, or to permanently exclude them, they will notify the parents without delay and issue a new exclusion notice to parents.

7. Duty to inform the governing board and LA

- 7.1. The headteacher will inform the governing board and LA, without delay, of the following:
- any permanent exclusions (including where a suspension is followed by a decision to permanently exclude the student)
 - any suspensions which would result in the student being suspended for more than five school days in a term (or more than 10 lunchtimes)
 - any suspensions or exclusions which would result in the student being absent from an examination or national curriculum test
- 7.2. For any suspensions and exclusions, other than those above, the headteacher will notify the governing board and LA once per term.
- 7.3. All notifications to the governing board and LA will include the reasons for suspension or exclusion and the duration of any suspension.
- 7.4. If the student who is suspended or excluded lives outside the LA in which the school is located, the headteacher will notify the student's 'home authority'.

8. Arranging education for suspended and excluded students

- 8.1. For any suspensions of more than five school days, the governing board will arrange suitable full-time education for the student, which will begin no later than the sixth day of suspension.
- 8.2. Where a student receives consecutive suspensions, these will be regarded as cumulative, and full-time education will still have to be provided from the sixth day of suspension.
- 8.3. The governing board will not arrange full-time education for any student who is currently in their final year of compulsory education, and who does not have any further public examinations to sit.
- 8.4. The governing board is aware that it is beneficial to suspended and excluded students to begin their alternative education arrangements before the sixth day of suspension or exclusion; therefore, the governing board will always attempt to arrange alternative provision before the sixth day.
- 8.5. Where it is not possible to arrange alternative provision during the first five days, the school will ensure that they take reasonable steps to set and mark work for the student.
- 8.6. If a student with SEND has been suspended or excluded, the governing board will ensure that:
- any alternative provision is arranged in consultation with the parents/carers, who are able to request preferences
 - when identifying alternative provision, any EHC plan is reviewed/the student's needs are reassessed, in consultation with the student's parents

9. Considering exclusions

- 9.1. The governing board will consider any representations made by parents/carers regarding suspensions and exclusions.
- 9.2. Parents/carers and, where requested, a friend or representative, the headteacher and, a member of the LA, will be invited to attend any consideration of suspensions and exclusions and will be able to make representations.

- 9.3. Any meeting to consider an exclusion will be arranged at a date and time convenient for all parties, and in compliance with any statutory time limits.
- 9.4. Any meeting to consider reinstatement of a student will be arranged at a date and time convenient for all parties, and in compliance with any statutory time limits.
- 9.5. The governing board will consider the reinstatement of a suspended or excluded student, where:
- the exclusion is permanent
 - the suspension is fixed period, and would bring the student's total number of excluded school days to more than 15 in any given term
 - the suspension or exclusion would result in the student missing a public examination
- 9.6. In the case of suspension where the student's total number of suspended days is more than 5 but less than 15 school days within a term, if requested by the parents, the governing board will consider exclusions within 50 school days of receiving notification.
- 9.7. Where the student's total number of suspended school days does not amount to more than five, in the absence of any such representations, the governing board is not required to meet and cannot direct the reinstatement of the student.
- 9.8. Where suspension or exclusion would result in a student missing a public examination, the governing board will consider the suspension or exclusion before the test to decide whether the student be reinstated in time to take the examination.
- 9.9. If it is not practicable for a sufficient number of governors to consider the decision before the examination, the chair of governors, or the vice chair of governors, if necessary, will consider the exclusion alone and decide whether or not to reinstate the student.
- 9.10. In light of the above, the governing board will also consider whether it would be appropriate to allow the suspended or excluded student to enter the premises to take the examination.
- 9.11. When considering the reinstatement of a student, the governing board will:
- only discuss the suspension or exclusion with the parties present at the meeting
 - ask for any written evidence prior to the meeting
 - circulate any written evidence and information to all parties, at least five school days in advance of the meeting
 - allow students and parents/carers to be accompanied by a person of their choice at the meeting
 - consider what reasonable adjustments need to be made to support the attendance and contribution of parties at the meeting
 - identify the steps needed to enable and encourage the suspended or excluded student to attend the meeting and speak on his/her behalf, or how they may contribute personal views by other means if attendance is not possible
 - consider the interests and circumstances of the excluded student, including the grounds for suspension or exclusion

10. Reaching a decision

- 10.1. After considering suspensions and exclusions, the governing board will either:
 - decline to reinstate a student
 - direct the reinstatement of the student immediately, or on a specified date
- 10.2. If reinstatement would make no practical difference, e.g., if the student has already returned to school following a suspension or the parents make clear they do not want their child reinstated, the governing board will still consider whether the student should be officially reinstated, and whether the headteacher's decision to suspend the student was fair, lawful, and proportionate, based on the evidence presented.
- 10.3. The governing board will apply the civil standard of proof when responding to the facts relating to a suspension or exclusion, i.e., that 'on the balance of probabilities' it is more likely than not that the facts are true.
- 10.4. To reach a decision, the governing board will:
 - identify the steps they intend to take to ensure that all parties involved will have the opportunity to participate and present their views
 - ensure that minutes are taken of the meeting as a record of the evidence that was considered
 - ask all parties to withdraw from the meeting before concluding their decision
 - consider whether the exclusion of the student was lawful, proportionate, and fair, taking into account the headteacher's legal duties and any evidence that was presented to the governing board in relation to the decision to exclude
 - record the outcome of the decision on the student's educational records, along with copies, which will be kept for at least six months
 - inform the LA of the outcome
 - make a note of their findings, where they have considered an exclusion but cannot reinstate the student

11. Notification of considered suspensions and exclusions

- 11.1. The governing board will notify the parents/carers of the suspended or excluded student, the headteacher and the LA of their decision following the consideration of a suspension or exclusion, in writing and without delay.
- 11.2. In the case of exclusion, where the governing board decides not to reinstate the student, they will notify the parents:
 - that the exclusion is permanent
 - of their right for it to be reviewed by an independent review panel
 - of the date by which an application for review must be made
 - of the name and address to whom the review application should be submitted
 - that any application should set out the grounds on which it is being made and that, where appropriate, this includes reference to how a student's SEND needs are considered relevant to the exclusion
 - that, regardless of whether a student has been identified as having SEND, the parents/carers have a right to require the governing board to ensure a SEND specialist attends the review
 - of the role of the SEND expert that will attend the review, and that the parents/carers will not be charged for this

- that they are required to make it clear if they wish for a SEND expert to attend the review
 - that they may appoint someone at their own expense to make representations to the panel
- 11.3. The governing board will also notify parents/carers that if they believe a suspension or exclusion has been issued as a result of discrimination, then they are required to make a claim under The Equality Act 2010 to the First-tier Tribunal (SEND), and that this be within six months of when the discrimination allegedly took place.
- 11.4. After any conclusion, the governing board will notify the parents/carers, and all other parties involved, of the decision that was made and the reasoning for this, in sufficient detail.

12. Removing excluded students from the school register

- 12.1. The headteacher will remove students from the school register if:
- 15 school days have passed since the parents/carers were notified of the governing board's decision not to reinstate the student exclusion and no application for an independent panel review has been received
 - the parents/carers have stated in writing that they will not be applying for an independent panel review following a permanent exclusion
- 12.2. If an application for an independent panel review has been made within 15 school days, the headteacher will wait until the review has been determined, or abandoned, and until the governing board has completed any reconsideration that the panel recommended or directed it to carry out, before removing the student from the school register.
- 12.3. If a student's name is to be removed from the register, the headteacher will make a return to the LA, which will include:
- all the particulars which were entered in the register
 - the address of any parent with whom the student normally resides
 - the grounds upon which the student's name is to be removed from the register
- 12.4. Any return to the LA will be made as soon as the grounds for removal are met and no later than the date on which the student's name was removed.
- 12.5. If a student's name has been removed from the register and a discrimination claim is made, the student may be reinstated following a decision made by the First-tier Tribunal Court or County Court.
- 12.6. Whilst a student's name remains on the admissions register, the appropriate code will be used to mark the student's attendance:
- Code B: Education off-site
 - Code D: Dual registration
 - Code E: Absent and not attending alternative provision

13. Independent Review Panel

- 13.1. The LA will review the governing board's decision not to reinstate a permanently excluded student if the parents/carers submit their application for this within the required time frame.
- 13.2. The LA will constitute an independent review panel of three or five members that represent the following categories:
- A lay member to chair the panel. This individual will not have worked in any school in a paid capacity
 - A current or former school governor who has served for at least 12 consecutive months in the last 5 years
 - A headteacher or individual who has been a headteacher within the last 5 years
- 13.3. Parents/carers are required to submit their applications within:
- 15 school days of the governing board's notification of their decision
 - 15 school days of the final determination of a discriminatory claim made under The Equality Act 2010
- 13.4. Any application made outside of this timeframe will not be reviewed.
- 13.5. Parents/carers are able to request an independent panel review even if they did not make a case to, or attend, the governing board's initial consideration of the exclusion.
- 13.6. The LA will adhere to all statutory guidelines when conducting an independent panel review, as outlined in the DfE's statutory guidance document 'Exclusion from maintained schools, Academies and student referral units in England' .

14. Appointing a SEND expert

- 14.1. If requested by parents/carers in their application for an independent review panel, the LA must appoint a SEND expert to attend the panel and cover the associated costs of this appointment. Parents/carers have a right to request the attendance of a SEND expert at a review, regardless of whether the school recognises that their child has SEND.
- 14.2. The LA will make arrangements to indemnify the SEND 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. An individual will not serve as a SEND expert if they have, or at any time have had, any connection with the LA, school, parents or student, or the incident leading to the exclusion, 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 LA.
- 14.4. The SEND expert be a professional with first-hand experience of the assessment and support of SEND, as well as an understanding of the legal requirements on schools in relation to SEND. Examples of suitable individuals might include educational psychologists; specialist SEND teachers; special educational needs coordinators (SENCOs) and behaviour support teachers.
- 14.5. Recently retired individuals are not precluded from fulfilling this role, however, the LA will, during the interview, assess the knowledge of such individuals to ensure that they have a good understanding of current practice and the legal requirements on schools in relation to SEND.

- 14.6. Whilst individuals are not automatically taken to be partial simply because they are an employee of, or contracted by, a LA, they will not have had any previous involvement in the assessment or support of SEND for the excluded student, or siblings of the excluded student. The LA will request that prospective SEND experts declare any conflict of interest at the earliest opportunity.
- 14.7. The final decision on the appointment of a SEND expert is for the LA to make, but it will take reasonable steps to ensure that parents/carers have confidence in the impartiality and capability of the SEND expert. Where possible, this will include offering parents/carers a choice of a SEND expert. In order to meet its duties within the statutory time frame, the LA will consider maintaining a list of individuals capable of performing the role of SEND expert in advance of a request.
- 14.8. It is for the LA to determine the amount of any payment in relation to the appointment of the SEND expert, such as financial loss, travel, and subsistence allowances.

15. The role of a SEND expert

- 15.1. The SEND expert's role is analogous to an expert witness, providing (orally, in writing or both) impartial advice to the panel on how SEND might be relevant to the exclusion. The SEND expert will base their advice on the evidence provided to the panel. The SEND expert's role does not include making an assessment of the student's SEND.
- 15.2. The focus of the SEND expert's advice will be on whether the school's policies that relate to SEND, or the application of these policies in relation to the excluded student, were legal, reasonable, and procedurally fair. If the SEND expert believes that this was not the case they will, where possible, advise the panel on the possible contribution that this could have made to the circumstances of the student's exclusion.
- 15.3. Where the school does not recognise that a student has SEND, the SEND expert will advise the panel on whether they believe the school acted in a legal, reasonable, and procedurally fair way with respect to the identification of any SEND that the student may potentially have, and any contribution that this could have made to the circumstances of the student's exclusion.
- 15.4. The SEND expert will not criticise a school's policies or actions simply because they believe a different approach have been followed or because another school might have taken a different approach.

16. Appointing a clerk

- 16.1. The LA will decide whether to appoint a clerk to the independent review panel, or to make alternative arrangements to administer the panel.
- 16.2. Where a clerk is appointed, the LA will ensure that the clerk did not serve as clerk to the governing board when the decision was made not to reinstate the student.

17. The role of a clerk

17.1. The clerk's role is to provide advice to the panel and parties to the review on procedure, law, and statutory guidance on exclusions.

17.2. The clerk will:

- identify, in advance of the meeting, whether the excluded student wishes to attend the panel hearing, taking reasonable steps to enable the student to feedback their views, irrespective of their attendance
- identify, in advance of the meeting, whether any alleged victims of the incident(s) leading up to the exclusion wish to attend the panel hearing, taking reasonable steps to enable them to feedback their views, irrespective of their attendance
- ensure that the panel is able to hear from any witnesses to the incident(s) leading to the exclusion, taking into account the fact that some of these people may be students at the school. (Students under 18-years-old will not be allowed to appear in person without parental consent)
- inform the parents, headteacher, governing board and the LA that they are entitled to make oral and written representations to the panel; attend the hearing; and be represented
- Inform the LA that it is entitled to make oral and written representations to the panel, attend the hearing, and be represented.
- ensure that all parties are:
 - provided with copies of relevant papers at least five school days before the review, notifying the panel if any requested documents have not been provided in case the panel wishes to adjourn until a later date
 - informed about who is attending the meeting, and what their roles are
- attend the review and ensure that minutes are produced in accordance with instructions from the independent review panel

17.3. Where a clerk is not appointed, the LA will undertake the functions outlined in paragraphs 16.1 and 16.2 of this policy.

18. The duties of the Independent Review Panel members in the conduct of an independent review panel

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

18.2. The panel will 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'.

18.3. Following the review, the panel will do one of the following:

- uphold the decision
- recommend that the governing board reconsiders reinstatement
- quash the decision and direct that the governing board reconsiders reinstatement

18.4. The panel's decision does not have to be unanimous and can be decided by majority vote. It is binding on the student, parents, the governing board, headteacher and the LA.

19. Reconsidering reinstatement following a review

19.1. Where the independent review panel instructs the governing board to reconsider their decision not to reinstate a student, they will do so within 10 school days of being given notice of the review panel's decision.

19.2. The school is aware that if, following an instruction to reconsider, the governing board does not offer to reinstate the student, then a £4,000 adjustment will be made to the school's budget.

19.3. Following a reconsideration, the governing board will notify the parents/carers, the headteacher and the LA, of their reconsidered decision and the reasons for this.

20. Criminal investigations

20.1. The headteacher will not postpone taking a decision to exclude a student due to a police investigation being underway, or any criminal proceedings that are in place.

20.2. Particular consideration will be given by the headteacher when deciding to suspend or exclude a student where evidence is limited by a police investigation, to ensure that any decision made is fair and reasonable.

20.3. If the governing board is required to consider the headteacher's decision in these circumstances, they will not postpone the meeting and will make a decision based on the evidence available.

21. Training requirements

21.1. The LA will ensure that all independent review panel members and clerks have received training within the two years prior to the date of the review.

21.2. Training will cover:

- the requirements of the legislation, regulations, and statutory guidance governing exclusions
- the need for the panel to observe procedural fairness and the rules of natural justice.
- the role of the chair of a review panel
- the role of the clerk to a review panel
- the duties of headteachers, governing boards and the panel under the Equality Act 2010
- the effect of section 6 of the Human Rights Act 1998 and the need to act in a manner compatible with human rights protected by that Act

21.3. Clerks will also have an up-to-date understanding on developments in case law that are relevant to exclusion.

22. Monitoring and review

22.1. This policy will be reviewed on three-year basis by the headteacher in conjunction with the governing board.

22.2. All members of staff are required to familiarise themselves with this policy as part of their induction programme.

Appendix a: Flowchart for reviewing the headteacher's suspension or exclusion decision

