
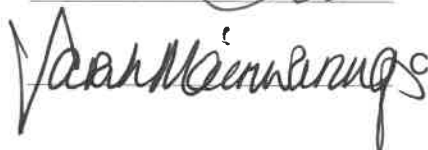


# Morecambe Road School

## Pupil Exclusion Policy

Approved by the Full Governing Body on 23<sup>rd</sup> June 2021:

Signed by:

 Headteacher  
 Chair of governors

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## **Statement of intent**

At Morecambe Road School, we understand that strong relationships, good behaviour and high expectations of conduct are essential for promoting a high quality education. All of our children have an Education, Health and Care Plan (EHCP) and as such need regular, consistent access to many services within the educational environment. For this reason, exclusion of children at Morecambe Road School will only be used in extreme and serious circumstances.

The school has created this policy to clearly define the legal responsibilities of the headteacher, governing body and LA when responding to child exclusions, 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 child's right to an education despite having been excluded, by ensuring that appropriate arrangements are in place.

## **1. Legal framework**

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

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

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

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

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

- Relationship & Behaviour Policy
- Anti-Bullying Policy
- Special Educational Needs and Disability (SEND) Policy
- Personal, Social and Health Education (PSHE) 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 children in local authority care.
- Arranging suitable full-time education for any child of compulsory school age excluded permanently, in coordination with the school.
- Reviewing and reassessing children's needs in consultation with their parents with a view to identifying a new placement.
- Arranging for an independent review panel hearing to review the decision of the governing body not to reinstate a permanently excluded child 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.
- Appointing a clerk to provide advice to the panel and parties to the review on procedure, law and statutory guidance on exclusions.

- Ensuring all panel members and the clerk have received training within the two years prior to the date of the review.

2.2. The governing board is responsible for:

- Providing information to the Secretary of State and LA about any exclusions within the last 12 months.
- Arranging suitable full-time education for any child of compulsory school age excluded on a fixed-term basis.
- Considering parents' representations about exclusions within 15 school days of receiving notice if the appropriate requirements are met.
- Where an exclusion would result in a child missing a public examination or test, considering the exclusion before this date.
- Considering whether it would be appropriate for a child 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 children.
- Considering the interests and circumstances of the excluded child, including the circumstances in which they were 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 an exclusion.
- Ensuring clear minutes are taken of the representation meeting.
- Noting the outcome of the representation meeting on the child's education record, along with copies of relevant papers for future reference.
- Notifying the child's parents, the headteacher and LA of its decision and the reasons for it, without delay.
- Where appropriate, informing parents of where to apply for an independent review panel.
- Informing parents of relevant sources of information.
- Ensuring a child's name is removed from the school admissions register, where appropriate.
- Reconvening within 10 school days to reconsider reinstatement of a child where directed to do so by the exclusions review panel.

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

- Making reasonable efforts to inform 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.
- Making reasonable efforts to circulate 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.

#### 2.4. The headteacher is responsible for:

- Implementing good levels of conduct to ensure all children can benefit from the opportunities provided by education and to minimise potential exclusions.
- Applying the civil standard of proof when establishing the facts in relation to an exclusion.
- Considering any contributing factors that are identified after an incident of serious behaviour has occurred, e.g. if a child has suffered bereavement, bullying or has a mental health issue.
- Considering the use of a multi-agency assessment for a child who demonstrates persistent disruptive behaviour.
- Reviewing the effectiveness of exclusions as a consequence, e.g. if a child has received multiple exclusions or is approaching the legal limit for exclusions in an academic year.
- Considering what extra support may be needed to identify and address the needs of individual children, particularly those from marginalised groups, e.g. FSM.
- Engaging effectively with parents in supporting the behaviour of children with additional needs.
- Determining whether a child will be excluded on disciplinary grounds.
- Withdrawing any exclusions that have not been reviewed by the governing board, where appropriate.
- Ensuring any decision to exclude is lawful, rational, reasonable, fair and proportionate.
- Complying with the requirements of the Equality Act 2010 when deciding whether to exclude a child.
- Ensuring they have considered their legal duty of care when sending a child home following an exclusion.
- Making the decision to exclude based on the evidence available at the time, regardless of any police investigation and/or criminal proceedings.
- Notifying a child's parents without delay where the decision is taken to exclude the child, including the days on which the parents must ensure the child 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 governing board and LA of their decision to exclude a child where appropriate, as well as the child's home authority if required.
- Notifying the governing board once per term of any exclusions not already notified.
- Organising suitable work for excluded children where alternative provision cannot be arranged.

### 3. Grounds for exclusion

3.1. The school will only exclude a child where it is absolutely necessary, and where all other possible disciplinary consequences, as detailed in the school's Relationship & Behaviour Policy, have failed to be successful.

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

- Any incident which poses a risk to other children or members of staff, e.g. bringing a weapon onto the premises
- Any incidents which breach the law
- Persistent and severe bullying
- A single, serious and major incident, e.g. serious assault on another individual leading to injury

- 3.3. Children can be excluded on a fixed-period basis, i.e. up to 45 school days within a year, or permanently. Similarly, children can be permanently excluded following a fixed-period exclusion, where further evidence is presented.
- 3.4. In all cases, the headteacher will decide which exclusion period a child will be subject to, depending on what the circumstances warrant.

#### **4. The headteacher's power to exclude**

- 4.1. Only the headteacher has the power to exclude a child from the school, and is able to decide whether this is on a fixed-period or permanent basis. All exclusions will only be issued on disciplinary grounds.
- 4.2. The headteacher is able to exclude children from the premises where their behaviour is disruptive during lunchtime. All lunchtime exclusions will be counted as half of a school day.
- 4.3. Any decision made to exclude a child will be lawful, proportionate and fair, with respect to legislation relating directly to exclusions and the school's wider legal duties, including the ECHR.
- 4.4. All exclusions will be formally recorded on SIMS.
- 4.5. When sending a child home following any exclusion, the headteacher will ensure that they exercise their duty of care at all times and will always inform the parents.
- 4.6. The headteacher will apply the civil standard of proof when responding to the facts relating to 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 exclusion that has not already been reviewed by the governing board.
- 4.8. 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, disability, and will not increase the severity of a child's exclusion on these grounds.
- 4.9. The headteacher will not issue any 'informal' or 'unofficial' exclusions, such as sending a child home to 'cool-off', regardless of whether or not the parents have agreed to this.
- 4.10. The headteacher will not use the threat of exclusion as a means of instructing parents to remove their child from the premises.

#### **5. Factors to consider when excluding a child**

- 5.1. When considering the exclusion of a child, the headteacher will:
  - Allow the child the opportunity to present their case, and ensure they are provided with the best possible support in order to do this.
  - Take into account any contributing factors that are identified after an incident of behaviour has occurred, e.g. if the child's wellbeing has been compromised, or they have been subjected to bullying.

- Take into consideration whether the child 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 consequence.
  - Consider early intervention to address underlying causes of disruptive behaviour, including liaising with external agencies, to assess children who demonstrate consistently unsettled behaviour.
- 5.2. The headteacher will consider avoiding permanently all children at Morecambe Road School, as they have an EHCP.
  - 5.3. Where any member of staff has concerns about vulnerable child groups and their behaviour, they will report this to the headteacher who will instigate a multi-agency assessment to determine whether the behavioural issues might be as a result of educational, mental health or other needs and vulnerabilities.
  - 5.4. Where SEMH issues are identified, an individual behaviour plan will be created using the graduated response outlined in the school's Relationship & Behaviour Policy. If the child continues to endanger the physical or emotional wellbeing of other children or staff, despite exhausting the graduated response process, then a fixed term exclusion may be considered. If this persists despite a significant amount of multi-agency discussion and intervention, the headteacher may have a discussion with the LA to ascertain if another school would be more suited to that child's needs.
  - 5.5. In accordance with the Equality Act 2010, no child will be excluded before the graduated response process has been completed.
  - 5.6. Where a child is permanently moved to another school where their needs could be better met, detailed records will be kept highlighting that these children are closely tracked and show that the school has a close relationship with the child's next destination.
  - 5.7. The headteacher will work in conjunction with all parents at Morecambe Road School, to establish the most effective support mechanisms.

## **6. Duty to inform parents**

- 6.1. Following the headteacher's decision to exclude a child, they will immediately inform the parents, in person or by telephone, of the period of the exclusion and the reasons behind this.
- 6.2. The headteacher will inform the parents in writing (electronically if written permission has been received from the parents for notices to be sent this way) of the following:
  - The reason(s) for the exclusion
  - The length of the fixed-period exclusion
  - Their right to raise any representations about the exclusion to the governing board, including how the child 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 exclusion, and the fact that they are able to bring an accompanying individual
  - The arrangements that have been made for the child to continue their education prior to the organisation of any alternative provision, or the child's return to school
  - Relevant sources of free, impartial information



- 6.3. Where the child is of compulsory school age, the headteacher will inform the parents by the end of the afternoon session that:
- For the first five days of the exclusion parents are legally required to ensure that their child is not present in a public place during school hours without justification, and that parents 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 of the following:
- The start and end date for any provision of full-time education
  - The address at which the provision will take place
  - Any information necessary for the child to identify the person they should report to on the starting date

## **7. Duty to inform the governing board and LA**

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

## **8. Arranging education for excluded children**

- 8.1. For any fixed-period exclusions of more than five school days, the governing board will arrange suitable full-time education for the child, which will begin no later than the sixth day of exclusion.
- 8.2. Where a child receives consecutive fixed-period exclusions, these will be regarded as cumulative, and full-time education will still have to be provided from the sixth day of exclusion.
- 8.3. The governing body will not arrange full-time education for any child 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 body is aware that it is beneficial to excluded children to begin their alternative education arrangements before the sixth day of exclusion. The governing board will always attempt to arrange alternative provision before the sixth day of exclusion.
- 8.5. Where it is not possible to arrange alternative provision during the first five days of exclusion, the school will ensure that they take reasonable steps to set and mark work for the excluded child.

8.6. The governing body will ensure that:

- Any alternative provision is arranged in consultation with the child's parents, who are able to request preferences.
- When identifying alternative provision, any EHCP is reviewed/the child's needs are reassessed, also in consultation with the child's parents.

## **9. Considering exclusions**

9.1. The governing body will consider any representations made by parents in regard to exclusions.

9.2. Parents and, where requested, a friend or representative, the headteacher and a member of the LA will be invited to attend any consideration of exclusions and will be able to make representations.

9.3. Any meeting to consider reinstatement of a child will be arranged at a date and time convenient for all parties, and in compliance with any statutory time limits.

9.4. The governing body will consider the reinstatement of an excluded child, where:

- The exclusion is fixed-period, and would bring the child's total number of excluded school days to more than 15 in any given term.
- The exclusion would result in the child missing a public examination.

9.5. In the case of a fixed-period exclusion where the child's total number of excluded days is more than five but less than 15 school days within a term, if requested by the parents, the governing body will consider exclusions within 50 school days of receiving notification.

9.6. In the case of a fixed period exclusion, where the child's total number of excluded school days does not amount to more than five, in the absence of any such representations, the governing body is not required to meet and cannot direct the reinstatement of the child.

9.7. Where exclusion would result in a child missing a public examination, the governing body will consider the exclusion before the test to decide whether the child should be reinstated in time to take the examination.

9.8. If it is not practicable for a sufficient number of governors to consider the decision before the examination, the chair of governors will consider the exclusion alone and decide whether or not to reinstate the child.

In light of the above, the governing body will also consider whether it would be appropriate to allow the excluded child to enter the premises to take the examination.

9.9. When considering the reinstatement of an excluded child, the governing body will:

- Only discuss the 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 children and parents 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 excluded child to attend the meeting and speak on their behalf, or how they may contribute personal views by other means if attendance is not possible.
- Consider the interests and circumstances of the excluded child, including the grounds for exclusion.

## **10. Reaching a decision**

10.1. After considering exclusions, the governing body will either:

- Decline to reinstate the child before the end of the fixed-term exclusion.
- Direct the reinstatement of the child immediately, or on a specified date.

10.2. If reinstatement would make no practical difference, e.g. if the child has already returned to school following a fixed-period exclusion or the parents make clear they do not want their child reinstated, the governing board will still consider whether the child should be officially reinstated, and whether the headteacher's decision to exclude the child was fair, lawful and proportionate, based on the evidence presented.

10.3. The governing body will apply the civil standard of proof when responding to the facts relating to an exclusion, it is more likely than not that the facts are true.

10.4. To reach a decision, the governing body 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 child was lawful, proportionate and fair, taking into account the headteacher's legal duties and any evidence that was presented to the governing body in relation to the decision to exclude.
- Record the outcome of the decision on the child's educational records, along with copies, which will be kept for at least six months.
- Make a note of their findings, where they have considered an exclusion but cannot reinstate the child.

## **11. Notification of considered exclusions**

11.1. The governing body will notify the parents of the excluded child, the headteacher and the LA of their decision following the consideration of an exclusion, in writing and without delay.

11.2. The governing body will also notify parents that, if they believe an 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 should be within six months of when the discrimination allegedly took place.

11.3. After any conclusion, the governing body will notify the parents, and all other parties involved, of the decision that was made and the reasoning for this, in sufficient detail.

## 12. Independent review panel

- 12.1. 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 five years.
  - A headteacher or individual who has been a headteacher within the last five years.
- 12.2. Parents 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.
- 12.3. Any application made outside of this timeframe will not be reviewed.
- 12.4. Parents 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.
- 12.5. 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 child referral units in England' 2017.

## 13. Appointing a SEND expert

- 13.1. If requested by parents in their application for an independent review panel, the LA will appoint a SEND expert to attend the panel and cover the associated costs of this appointment.
- 13.2. 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.
- 13.3. The SEND expert's role is set out in section 15 of this policy.
- 13.4. Individuals will not serve as a SEND expert if they have, or at any time have had, any connection with the LA, school, parents or child, 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 they are an employee of the LA.
- 13.5. The SEND expert will 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; SENCOs; and behaviour support teachers.
- 13.6. Recently retired individuals are not precluded from fulfilling this role; however, the LA will, during interview, assess the knowledge of such individuals in order to ensure that they have a good understanding of current practice and the legal requirements on schools in relation to SEND.

- 13.7. Whilst individuals are not automatically taken to be partial simply because they are an employee of, or contracted by, the LA, they will not have had any previous involvement in the assessment or support of SEND for the excluded child, or siblings of the excluded child. The LA will request that prospective SEND experts declare any conflict of interest at the earliest opportunity.
- 13.8. 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 have confidence in the impartiality and capability of the SEND expert. Where possible, this will include offering parents a choice of 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.
- 13.9. The LA will determine the amount of any payment in relation to the appointment of the SEND expert, such as financial loss, travel and subsistence allowances.

## **14. The role of a SEND expert**

- 14.1. The SEND expert's role is analogous to an expert witness, providing (orally and/or written) 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 child's SEND.
- 14.2. The focus of the SEND expert's advice will be on whether the school's policies and the application of these policies in relation to the excluded child, 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 this could have made to the circumstances of the child's exclusion.
- 14.3. The SEND expert will not criticise a school's policies or actions simply because they believe a different approach should have been followed or because another school might have taken a different approach.

## **15. Appointing a clerk**

- 15.1. The LA will decide whether to appoint a clerk to the independent review panel, or to make alternative arrangements to administer the panel.

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 child.

## **16. The role of a clerk**

- 16.1. The clerk's role is to provide advice to the panel and parties to the review on procedure, law and statutory guidance on exclusions.
- 16.2. The clerk will:
  - Identify, in advance of the meeting, whether the excluded child wishes to attend the panel hearing, taking reasonable steps to enable the child 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 children at the school (Children 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.
- 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.

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

## **17. Criminal investigations**

- 17.1. The headteacher will not postpone taking a decision to exclude a child due to a police investigation being underway, or any criminal proceedings that are in place.
- 17.2. The headteacher will give particular consideration when deciding to exclude a child where evidence is limited by a police investigation, to ensure that any decision made is fair and reasonable.
- 17.3. 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.

## **18. Training requirements**

- 18.1. 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.
- 18.2. 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.
- 18.3. Clerks will also have an up-to-date understanding on developments in case law which are relevant to exclusion.

## **19. Monitoring and review**

- 19.1. This policy will be reviewed regularly by the headteacher.
- 19.2. All members of staff are required to familiarise themselves with this policy as part of their induction programme.

