



KINGSWOOD HOUSE SCHOOL

Exclusion Policy

This policy relates to the whole school including the Early Years Foundation Stage.

Introduction

At Kingswood House School there is a very clear behaviour policy which outlines the general stages a pupil will encounter before exclusion is considered. There are obviously occasions where a stage system does not apply for a single serious offence.

'Excluding Pupils- A practical Guide for Independent Schools' by Farrar and Co (2nd Edition, May 2013) has been used as a template for the procedure for handling serious breaches of discipline and exclusions, including appeals and the aftermath. A decision to exclude a pupil, either for a fixed period or permanently is seen as a last resort by the School.

The School is responsible for communicating to pupils, parents and staff its expectations of standards of conduct. A range of policies and procedures are in place to promote good behaviour and appropriate conduct. No exclusion will be initiated without first exhausting other strategies or, in the case of a serious single incident, a thorough investigation.

What behaviour merits exclusion?

A non-exhaustive list of the sorts of behaviour that could merit exclusion includes the following:

- Drug abuse
- Alcohol abuse
- Theft
- Bullying
- Physical assault/verbal abuse/threatening behaviour against pupils and adults
- Fighting
- Sexual harrasment
- Abuse on grounds of race, religion/belief, disability, SENs (etc.)
- Sexual misconduct
- Damage to property
- Persistent disruptive behaviour
- Dangerous weapons
- Unreasonable or otherwise inappropriate parental behaviour
- malicious allegation against staff which is found to be untrue

Please note that exclusion may also be imposed as a sanction for a series of minor misdemeanors.

Geographical Application

This policy applies to behaviour of pupils in the School, its grounds and outside of the school premises. In accordance with DfE guidance, *'Behaviour and Discipline in Schools' (2014)*, 'teachers have the power to discipline pupils for misbehaviour outside the school premises "to such an extent that is reasonable".' This may include:

- taking part in any school-organised or school-related activity or
- travelling to or from school or
- wearing school uniform or
- in some other way identifiable as a pupil at the school.

Teachers may also discipline pupils for misbehaviour at any time, whether or not the conditions above apply that:

- could have repercussions for the orderly running of the school or
- poses a threat to another pupil or member of the public or
- could adversely affect the reputation of the school.

In all cases of misbehaviour, the teacher may only discipline the pupil when on school premises (or elsewhere when the pupil is under the lawful control of the teacher).

Procedure

First Steps

When a potential exclusion presents itself, some key considerations are as follows:

What exactly is the allegation?

- The allegation should be established and the pupil(s) concerned should be made aware of the allegation. This will be done by a member of the Senior Leadership Team –usually the Deputy Head with the form tutor/ class teacher present.

What information is available and what further information is required?

- Consider what evidence is already available to support the allegation. Next, consider what additional information is required and how best to obtain it.

Is anyone at risk (i.e. do the police or social services need to be informed?)

- Advice should be taken from the DSL- Liam Clarke, Sally Witts or Eleanor Walliss. See the School Safeguarding policy for further advice.

Who should be dealing with this?

-The rules of natural justice dictate that, where possible, a different person should conduct each of the following stages:

- interviews with witnesses and general investigation of the allegations;
- the hearing; and
- the appeal.

At Kingswood House , the investigation for serious offences is carried out by the Deputy Head in conjunction with another member of the Senior Leadership Team. The hearing is conducted by the Head and any appeal is overseen by the governors. The Head should not take part in the investigation as this may compromise his impartiality at the actual hearing.

Investigation

Key issues are as follows:

Before a decision to exclude can be fairly taken, it is essential to establish the facts. If exclusion is being considered then statements should be taken from all pupils and staff who were involved in or witnessed the incident. DfE guidance, whilst not binding, is helpful. It states that all written statements should be attributed, signed and dated by the witness who should first be given the opportunity to read it. The statement should also be countersigned by the person who took the statement and the person who was present when the pupil signed it. The original statement should be kept on file. The information gatherer should not be the same person as the decision taker. The Head is not to be involved at this stage.

It is good practice for another adult to be present when pupils are being interviewed by the person charged with the investigation. However, this need not be a parent. A neutral adult such as the school secretary or another member of staff is preferable. At Kingswood House, the combination of the Deputy Head and a member of the Senior Management team is the first option.

Parents should obviously be informed although the timing of this will always depend on the facts of the particular case. As a general rule, however, it will normally make sense for the parents to be informed after initial investigations have been made but sufficiently in advance of any hearing to allow them time to prepare for that hearing. Clearly, where a pupil has been suspended pending the outcome of a disciplinary process then it will be necessary to inform the parents immediately of this. Similarly, in cases where Social Services or the Police become involved, it will generally be prudent to inform parents as soon as possible –***reference should be made to Section VI of Excluding Pupils- A Practical Guide for Independent Schools before contacting Police or Social Services.***

Suspects should be kept apart to the extent that this is reasonably possible. The pupil should be told not to discuss the matter with other pupils and, in particular, with the other pupils involved. This is particularly important where the accusation relates to issues such as bullying and physical or verbal abuse.

In particularly serious cases it may be appropriate for the pupil to be suspended. The Head in consultation with the Chair of Governors, on occasions will make this decision. Any suspension should be as brief as possible. If a relatively lengthy suspension is unavoidable, suitable arrangements should be made to ensure that, so far as practicable, the child is able to continue with their education during this time. For example, arrangements could be made for work to be sent home and marked. Parents should be told immediately of any decision to suspend and this should be followed within one school day by a confirmatory letter.

HEARING

Once the information gathering stage has been completed, the next step is to hold the hearing itself. The hearing will generally be heard by the Head and attended by the pupil, parents, a note taker and any other person required (e.g. witnesses or the member of staff who carried out the investigation). A checklist for conducting the hearing is set out below:

Before the Hearing

Notify the pupil and parents of the hearing

- Make sure the letter sets out precisely what allegations have been made. It should also contain all relevant practical details (e.g. the time, date, place and purpose of the hearing and who will be attending).

Circulate the evidence to be relied upon by the school.

- Provide copies of all evidence to be relied on by the school (including witness statements) and ask for any written submissions from the pupil/parents (including witness statements) to be provided for circulation by a specified date. Make sure all parties have sufficient time to prepare for the hearing.

Circulate any further evidence produced by the pupil/parents.

- Ideally, all parties should have copies of all evidence to be relied on five working days before the actual hearing. If this is not possible then consider whether a brief postponement is preferable.

At the Hearing

Explain the purpose of the hearing

- The Head should set out how the hearing will be conducted.

The school presents its case

- Generally this will be done by the person who conducted the investigation. If witness statements have been obtained then these should be read out loud.

Allow the pupil/parents to ask questions

- From a legal perspective, the pupil and parents are entitled to know the precise nature of the alleged facts. From a practical perspective, allowing sufficient questioning will reinforce the impression of fairness.

The pupil/parents present their case

- The parents will normally undertake this role, but the pupil should be allowed to comment if appropriate.

The Head asks questions of the pupil/parents

- The objective is for the Head to establish all the relevant facts to allow a fair decision to be reached.

Minute the hearing

- A designated note-taker should note the names and roles of all people present, all written documents considered, all oral evidence given and the decision reached, including the reasons stated.

Adjourn

- In all but the most straightforward of cases, however, it is good practice to adjourn the hearing before announcing the decision. Before adjourning, explain what will happen next and when.

Following the Hearing

Inform all parties of the decision

This can be done face to face in the first instance but should always be confirmed in writing, preferably within one school day of the hearing. The letter should state the decision in relation to the charge (or each of them), the sanction, when it takes effect, the reasons, to whom the parents may appeal. Any request for an appeal must be made as

soon as possible and in any event within seven days of the decision being notified to the parents.

Questions that may arise

Should the pupil be present at the hearing?

- As a general rule, yes. Natural justice requires that a pupil is able to hear the case against him and defend himself. Unless there are strong reasons to the contrary, therefore, the pupil should be present and allowed to speak on their own behalf if he or she wishes to do so and the parents agree.

Should other witnesses be present at the hearing?

- Particularly where the other witnesses are also pupils it is generally preferable to rely on written statements at the hearing. Sometimes it may be felt that a witness should be present, for example to allow necessary questioning on the content of their statement. If so, the pupil may be asked to appear but should not be compelled to do so and the parents of that pupil must first consent.

Can parents bring legal representatives to the hearing?

- Parents should not bring legal representatives to the hearing unless there are compelling reasons for allowing it (e.g. illness, English not parents' first language). You may, however, wish to consider allowing parents to bring a non legally qualified supporter, making it clear in advance that this person is not able to make representations. If this offer is made then parents should also be asked to name any such supporter in advance of the hearing.

Sanction

Once the hearing has been held the decision-taker (almost certainly the Head) will have a range of sanctions open to him. Before concluding that exclusion is justified, the Head and Chair of Governors should ask the following questions:

1. Has the burden of proof been discharged?

Where the pupil is accused of something that does not amount to a crime, the burden of proof required is, that on the balance of probabilities (i.e. it is more probable than not) the pupil did what was alleged. However, the 2003 Court of Appeal decision in *R(S) -v- The Governing Body of Y P School* established that a higher standard of proof was required when excluding a pupil for something which amounts to a criminal offence. The relevant question instead was "Does the evidence prove beyond reasonable doubt that the pupil did what he or she is accused of?" Following the implementation of the Education (Pupil Exclusions) (Miscellaneous Amendments) (England) Regulations 2004, however, the position has changed once again. The Regulations, which took effect from 22 March 2004, make it clear that no matter what offence the pupil is accused of, the Head should decide the matter on the balance of probabilities. New guidance entitled *Improving Behaviour and Attendance: Guidance on exclusion from schools and pupil referral units* states that the more serious the allegations the more convincing the evidence substantiating the allegation needs to be. The regulations and guidance do not apply directly to independent schools who are still free to set their own behaviour policies. Like the Behaviour and Attendance guidance, however, the documents do provide a useful benchmark.

2. Is an exclusion fair in all the circumstances?

The decision to exclude is a very serious one with significant potential repercussions. In general, the decision should only be taken in response to a serious breach of the School's behaviour policy, once other options have been exhausted and if allowing the

pupil to remain in School would seriously harm the education or welfare of the pupil or others in the School. Once guilt has been established, ask yourself the following:

- **Does the offence fall within the School's list of offences which may lead to exclusion?** The list is found at the beginning of this policy but it is non-exhaustive.
- **Have pupils been excluded for similar offences in the past?** As a general rule it is dangerous to exclude a pupil where previous offenders have been let off with, for example, a suspension. Kingswood House is not bound to follow precedents but they will inevitably be asked to justify why a more severe sanction was fair in these circumstances.
- **Has this pupil committed a serious disciplinary offence in the past?** Excluding for a first breach of discipline is far more susceptible to challenge than where a pupil has a proven track record of misbehaviour. The sorts of first offence that may justify exclusion typically involve:
 - violence,
 - sexual assault,
 - drugs and/or
 - offensive weapons.Even then, a decision to exclude should have regard to all the relevant circumstances.
- **Has the school taken into account any relevant domestic circumstances and whether the pupil was provoked, perhaps as a result of bullying or harassment?**
- **Are any other pupils involved in the investigation being dealt with in the same way?** Again, it is dangerous to scapegoat one pupil in circumstances where others are to be treated more leniently. Check for consistency.
- **Are the interests of the pupil outweighed by those of the School community as a whole?** To put it another way, how much harm will it do to the school and those in it if this pupil is allowed to remain?

If the answer to any of these questions is "no", consider whether a less draconian sanction is more appropriate. Suspension (perhaps accompanied by a final warning) is the logical and less severe alternative. If the Headmaster feels able to then he could consider agreeing to a managed move of the pupil to another school, provided such an alternative can be readily identified. Another option may be to allow the parents an opportunity to withdraw the pupil rather than having an exclusion imposed. Both these options should be used with care and are generally to be avoided where there is no confidence in the quality of the relationship between the School and parents going forward. The Head should consider taking advice before offering either of these options.

Appeal

Any appeal against exclusion will be dealt with under this policy rather than under the School's complaints policy. Fundamental to the fairness of any exclusion process is the right to appeal. Parents may ask for an appeal of a decision to expel or require the removal of a pupil from the School (but not a decision to suspend the pupil unless the suspension is for 11 School days or more, or would prevent the pupil from taking a public examination). Any request for an appeal must be made as soon as possible and in any event within seven days of the decision being notified to the parents and should be made in writing to the Headmaster.

If parents request an appeal, the pupil will be suspended from school until the decision to expel or remove has been set aside or upheld. While suspended, the pupil shall remain away from school and will have no right to enter school premises during that time without written permission from the Head.

An appeal will be conducted under fair procedures in accordance with the requirements of natural justice.

The school will accept the appeal decision as final.

Who hears it?

An appeal should usually be heard by at least two of the governors and one person who is independent of the running of the School. This person would be someone who has held a position of responsibility and is used to analyzing evidence and putting forward balanced arguments. This person should be approved by the parent (approval not to be unreasonably withheld). Parents are entitled to know the names of those sitting on the appeal panel. A key point is that the appeal is not heard by the original decision taker and to this end, no governor who has been directly involved in the matter at hand should hear the appeal. Any governor with a connection to the pupil should also be excluded from the panel.

Location

There may be circumstances where it is unwise to hold an appeal hearing at the School if this can be avoided. A more neutral location that is convenient for all the parties may be considered.

Timing

The risk of lost schooling is a key concern that makes time of the essence. The objective must therefore be to hold any appeal as soon as possible, usually within seven days of the School being notified by the parents of their decision to appeal.

Purpose

The purpose of the appeal hearing is generally to decide two issues; first, whether the pupil actually committed the disciplinary offence in question and, second, whether permanent exclusion is a reasonable response. If the appeal panel concludes that the answer to the first question is no, the second question ceases to be relevant and the pupil should be re-admitted. The appeal panel should not receive or consider fresh evidence that relates to issues not considered when the decision to exclude was taken. Equally, it should not overturn a decision to exclude purely on the basis of there having been a technical defect in the procedure followed – unless that defect was so substantial that justice was not done. It should be made clear from the outset that the appeal decision is final.

New Evidence

Both the School and parents are free to introduce any relevant new evidence that has subsequently come to light and that relates to the issues considered when the original decision was made. As with the first hearing, however, it is important to ensure that any such evidence is distributed to the relevant parties in advance of the appeal and in sufficient time to allow everyone to prepare. If new evidence emerges at the appeal itself, consider whether an adjournment is necessary. Above all, note that whilst new evidence may be introduced, a new reason for the exclusion should not.

Appeal or Re-hearing

There may be an occasion where, unintentionally, the investigatory process or the first hearing is so flawed that it is difficult, if not impossible, for these flaws to be corrected by an appeal. In that situation, careful thought should be given to offering an appeal by way of re-hearing instead. Whilst this approach may require a little extra work in the short term, if its effect is to prevent lengthy further debates on procedural fairness then it is likely to be time well spent.

Aftermath

The decision to exclude is always a serious matter for both the pupil and the school. After following a fair procedure, the School does all it reasonably can to minimise educational damage to the pupil.

After-care

The consequences of a decision to exclude can be far-reaching, both in terms of the immediate issue of placing the pupil in another School but also in light of the perceived blemish to a pupil's good character. The potential for emotional and psychological side-effects should obviously be borne in mind and can be mitigated not only by the human way in which the process is managed, but also by the School's care for the pupil both during and after the process.

Fees after Expulsion

If the Pupil is expelled, there will be no refund of the acceptance deposit or of fees for the current or past terms, but the overseas element (if any) of the acceptance deposit, and the unspent balance of any lump sum prepayment will be refunded without interest. There will be no charge to fees in lieu of notice but all arrears of Fees and any other sum due to the School will be payable.

Removal in other Circumstances

Parents may be required, during or at the end of a term, to remove the pupil, temporarily or permanently from the school, if, after consultation with the pupil and/or the parent, the Head is of the opinion that by reason of the pupil's conduct or progress, the pupil is unwilling or unable to benefit sufficiently from the educational opportunities and/or community life offered by the School, or if a parent has treated the School or members of its staff unreasonably. In these circumstances, parents may be permitted to withdraw the pupil as an alternative to removal being required. The Head shall act with procedural fairness in all such cases, and shall have regard to the interests of the pupil and parents as well as those of the School (see appeal procedure above).

Fees Following Removal

If the Pupil is removed or withdrawn in the circumstances described above, the rules relating to fees and the acceptance deposit shall be the same as for expulsion save that the acceptance deposit will be refunded in full without interest.

Leaving Status

The expression "leaving status" has reference to whether the Pupil has been expelled, removed or withdrawn, and to the record which will be entered into the Pupil's file as to the reason for leaving, and the Pupil's status as a leaver, and the transfer of the Pupil's work to another educational establishment and to the nature of the reference which will be given in respect of the Pupil, and also to the financial aspects of the Pupil's leaving. These and any other relevant matters of leaving status will be discussed by the Head with the Parents and, where appropriate with the Pupil, at the time of the Head's decision.

Other important issues

Safety

An exclusion should not be enforced if doing so may put the safety of the pupil at risk. In cases where parents will not comply by, for example, refusing to collect the child, the child's welfare is the priority.

Confidentiality

Except as required by law, the School and its staff shall not be required to divulge to Parents or others any confidential information or the identities of pupils or others who have given information which has led to the complaint or which the Head has acquired during an investigation. The basic rule is that exclusion cases as a whole should be treated in the strictest confidence. This is something that should be clarified from the outset and reiterated at intervals throughout the process.

Equal Opportunities

Any decision to exclude should not be based on a person's race, sex, disability, sexual orientation or religious belief as stated in the Equality Act 2010.

Special Educational Needs

Following the implementation of the Special Educational Needs and Disability Act 2001 ("SENDA") it is unlawful either to treat a disabled pupil less favourably for a reason related to their disability, or to fail to make reasonable adjustments in relation to a child's education and associated services to ensure that disabled pupils are not placed at a comparative substantial disadvantage.

The School must take account of any special educational needs when considering whether or not to exclude a pupil. The Head should ensure that reasonable steps have been taken by the School to respond to a pupil's disability so the pupil is not treated less favourably for reasons related to the disability. 'Reasonable steps' could include:

- developing strategies to prevent the pupil's behaviour
- requesting external help with the pupil
- staff training

Where reasonable adjustments to policies and practices have been made to accommodate a pupil's needs and to avoid the necessity for exclusion as far as possible, exclusion may be justified if there is a material and substantial reason for it. A specific incident affecting order and discipline in the school may be such a reason.

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