

**INVICTUS**

Education Trust

**STUDENT EXCLUSION  
POLICY**

Approved by Board of Trustees  
30<sup>th</sup> September 2019

To be reviewed by Board of Trustees  
September 2022

## **Contents**

## **Page**

1. Legal Framework	3
2. Grounds for Exclusion	3
3. Headteachers Powers to Exclude	4
4. Factors to consider when excluding a student	4
5. Duty to inform Parents/Carers	5
6. Duty to inform the SGB and LA	6
7. Arranging Education for excluded Students	6
8. Considering Exclusions	7
9. Reaching a Decision	8
10. Notification of Decision	8
11. Removing student from school register	9
12. Independent Review Panel	10
13. Appointing a SEND Expert	10
14. Role of the SEND Expert	11
15. Appointing a Clerk	11
16. The role of Clerk	11
17. The duties of the Independent Review Panel	12
18. Reconsidering reinstatement	12
19. Criminal Investigations	12
20. Training	12
21. Review of Policy	13

## **1. Legal Framework**

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

- The Education Act 2002 (as amended by The Education Act 2011)
- The School Discipline (Student 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 Students) (England) Regulations 2007 (as amended 2014)
- The European Convention on Human Rights (ECHR)
- The Equality Act 2010

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 student 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'

This policy will be implemented in conjunction with the following Trust policies and procedures:

- Behavioural Policy
- Anti-Bullying Policy

## **2. Grounds for Exclusion**

The Trust will only exclude a student where it is absolutely necessary, and where all other possible disciplinary sanctions, as detailed in the Trust's Behaviour Policy, have failed to be successful.

The following examples of behaviour may underline the trust's/school's decision to 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
- Behaviour which brings the Trust/School into disrepute
- Persistent and severe bullying
- Verbal and physical abuse
- Persistent disruptive behaviour
- Possession/Consumption/Distribution of Drugs/Alcohol or banned substances
- A single, serious and major incident, e.g. serious assault on another individual leading to injury

Students can be excluded on a fixed-period basis, i.e. up to 45 school days within a year, or permanently.

Similarly, students can be permanently excluded following a fixed-period exclusion, where further evidence is presented.

In all cases, the Headteacher will decide which exclusion period a student will be subject to, depending on what the circumstances warrant.

## **3. Headteacher's Power to Exclude**

Only the Headteacher has the power to exclude a student 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.

The Headteacher is able to exclude students from the premises where their behaviour is disruptive during lunchtime. All lunchtime exclusions will be counted as half of a school day.

The Headteacher is able to consider a student's disruptive behaviour outside of the school premises as grounds for exclusion, in accordance with the Trust's Behaviour Policy.

Any decision made to exclude a student will be lawful, proportionate and fair, with respect to legislation relating directly to exclusions and the Trust's wider legal duties.

All exclusions will be formally recorded.

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.

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.

The Headteacher may withdraw any exclusion that has not already been reviewed by the School Governing Board.

At all times, the Headteacher will consider 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 student's exclusion on these grounds.

The Headteacher will not issue any 'informal' or 'unofficial' exclusions, such as sending a student home to 'cool-off', regardless of whether or not the parents have agreed to this.

The Headteacher will not use the threat of exclusion as a means of instructing parents to remove their child from the premises.

#### **4. Factors to consider when excluding a student**

When considering the exclusion of a student, the Headteacher will:

- Allow the student the opportunity to present their case.
- Consider 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.
- Consider whether there is a Safeguarding issue when determining whether to exclude a student
- 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, and consider whether an alternative arrangement such as a placement at another school in the Trust may enable the student to have a 'fresh start'.
- The Headteacher will consider what extra support may be available for vulnerable student groups whose exclusion rates are higher, in order to reduce their risk of exclusion, including the following:
  - LAC
  - Students eligible for free school meals
  - Students with special educational needs and disabilities (SEND)

- Certain ethnic groups
- In light of the above, the Headteacher will consider avoiding permanently excluding LAC students or students with an education, health and care (EHC) plan. For other vulnerable groups, additional support will be considered.
- Where any member of staff has concerns about vulnerable student groups and their behaviour, they will report this to the Headteacher who will consider what extra support or alternative placement is required.
- The Headteacher will work in conjunction with the parents of any student with additional needs, in order to establish the most effective support mechanisms.

## **5. Duty to inform Parents/Carers**

Following the Headteacher's decision to exclude a student, they will immediately inform, in person or by telephone, the parents/carers of the period of the exclusion and the reasons behind this.

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

- The reason(s) for the exclusion
- The length of the fixed-period exclusion or, for a permanent exclusion, the fact that it is permanent
- Their right to raise any representations about the exclusion to the School 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 SGB to consider the 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 academy
- Relevant sources of free, impartial information.

Where the student 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 (or until the start date of any alternative provision or the end of the exclusion where this is earlier), parents are legally required to ensure that their child is not present in a public place during academy hours without justification, and that parents may receive a penalty fine if they fail to do so.

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 student to identify the person they should report to on the starting date

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.

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

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

## **6. Duty to inform the School Governing Board and Local Authority**

For all exclusions the LA must be informed by completing the relevant LA Exclusion Form.

The Headteacher will inform the SGB, the Trust and LA, without delay, of the following:

- Any permanent exclusions (including where a fixed-period exclusion is followed by a decision to permanently exclude the student)
- Any exclusions which would result in the student being excluded for more than five academy days in a term (or more than 10 lunchtimes)
- Any exclusions which would result in the student being absent from an examination or national curriculum test

For any exclusions, other than those above, the Headteacher will notify the SGB, Trust and LA once per term.

All notifications to the SGB, Trust and LA will include the reasons for exclusion and the duration of any fixed-period exclusion.

If the student who is excluded lives outside the LA in which the school is located, the Headteacher will notify the student's 'home authority'.

## **7. Arranging Education for Excluded Students**

For any fixed-period exclusions of more than five academy days, the SGB will arrange suitable full-time education for the student, which will begin no later than the sixth day of exclusion.

Where a student 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.

For permanent exclusions, full-time education will also be provided for the student from the sixth day of exclusion by the Local Authority.

The SGB is aware that it is beneficial to excluded students to begin their alternative education arrangements before the sixth day of exclusion. The SGB will always attempt to arrange alternative provision before the sixth day of exclusion.

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 student.

If a student with SEND has been excluded, the SGB will ensure that:

*Invictus Education Trust Student Exclusion Policy September 2019 – Mrs Julie Duern*

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

## **8. Considering Exclusions**

The SGB will consider any representations made by parents in regard to exclusion.

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

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. The detrimental impact on other students will need to be considered, if the student is to be reinstated into the existing school. Other alternative options may need to be considered in order to provide the child with ongoing education and a fresh start at Invictus Education Trust. Refer to the Trust's Alternative Provision Policy for further details.

The SGB will consider the reinstatement of an excluded student, where:

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

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

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

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

If it is not practicable for a sufficient number of governors to consider the decision before the examination, a smaller sub-committee will consider the exclusion and decide whether or not to reinstate the student.

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

When considering the reinstatement of an excluded student, the SGB 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 academy days in advance of the meeting.

- Allow students 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 student 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 student, including the grounds for exclusion.

## **9. Reaching a Decision**

After considering exclusions, the SGB will either:

- Decline to reinstate the student.
- Direct the reinstatement of the student to the current school immediately, or on a specified date.
- Direct the reinstatement of the student to an alternative provision immediately, or on a specified date.

In all cases of reinstatement of students, the parents/student must be fully informed of the details of the arrangements and clear on the Schools expectations.

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

The SGB 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.

In order to reach a decision, the SGB 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 SGB 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.
- Make a note of their findings, where they have considered an exclusion but cannot reinstate the student.

## **10. Notification of Decision**

The SGB will notify the parents of the excluded student, the Headteacher, the Trust and the LA of their decision following the consideration of an exclusion, in writing and without delay.

In the case of a permanent exclusion, where the SGB decides not to reinstate the student, they will notify the parents:

- That it is permanent, and 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 of whom the review application should be submitted to.
- That any application should set out the grounds on which it is being made and that, where appropriate, this should include reference to how a student's SEND is considered relevant to the exclusion.
- That, regardless of whether a student has been identified as having SEND, the parents have a right to require the SGB to ensure a SEND expert attends the review.
- Of the role of the SEND expert that will attend the review, and that the parents 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.

The SGB 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.

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

### **11. Removing permanently excluded students from the School Register**

The Headteacher will remove students from the academy register if:

- 15 School days have passed since the parents were notified of the SGB's decision not to reinstate the student and no application for an independent panel review has been received.
- The parents have stated in writing that they will not be applying for an independent panel review following a permanent exclusion.

If an application for an independent panel review has been made within 15 academy days, the Headteacher will wait until the review has been determined, or abandoned, and until the SGB has completed any reconsideration that the panel recommended or directed it to carry out, before removing the student from the school register.

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.

Any return to the LA will be made as soon as the grounds for removal are met and no later than the date in which the student's name was removed.

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 (SEND) or County Court.

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

## **12. Independent Review Panel (IRP)**

Should the school receive an appeal against the SGB decision to permanently exclude a student. The parents have 15 days in which to submit their application to appeal.

Parents are required to submit their applications within:

- 15 school days of the SGB's notification of their decision.
- 15 school days of the final determination of a discriminatory claim made under the Equality Act 2010.

Any application made outside of this timeframe will not be reviewed.

Parents are able to request an independent panel review even if they did not make a case to, or attend, the SGB's initial consideration of the exclusion.

The Trust 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' 2017.

The school will need to contact the Local Authority Exclusion/Inclusion Officer to organise the independent panel review hearing. The school will cover the costs associated with organising the appeal hearing and the cost of an independent clerk to clerk the appeal hearing.

## **13. Appointing a SEND Expert**

If requested by parents in their application for an independent review panel, the Trust will appoint a SEND expert to attend the panel and cover the associated costs of this appointment.

The Trust will arrange 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.

Parents 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.

The SEND expert's role is set out in section 14 of this policy.

Individuals will not serve as a SEND expert if they have, or at any time have had, any connection with the Trust, 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 they are an employee of the Trust.

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; special educational needs coordinators (SENCOs); and behaviour support teachers.

Recently retired individuals are not precluded from fulfilling this role; however, the Trust 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.

Whilst individuals are not automatically taken to be partial simply because they are an employee of, or contracted by, the Trust, 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.

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

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 assessing the student's SEND.

The focus of the SEND expert's advice will be on whether the Trust/School's policies, which 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.

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.

The SEND expert will not criticise an academy's policies or actions simply because they believe a different approach should have been followed or because another academy might have taken a different approach.

#### **15. Appointing a Clerk**

The Local Authority will appoint a suitable clerk to the independent review panel. School will advise the Local Authority of the need to arrange this at the time of organising the hearing.

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

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

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, consider 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, and SGB 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.

Where a clerk is not appointed, the Trust will undertake the functions outlined above as the role of the Clerk.

### **17. The duties of Independent Review Panel members in the conduct of a review panel**

The role of the panel is to review the SGB's decision not to reinstate a permanently excluded student. In reviewing the decision, the panel will 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 academy.

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'.

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

- Uphold the decision.
- Recommend that the SGB reconsiders reinstatement.
- Quash the decision and direct that the SGB reconsiders reinstatement.

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 SGB, Headteacher and the LA.

### **18. Reconsidering reinstatement following a review**

Where the independent review panel instructs the SGB 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.

The school is aware that if the SGB does not offer to reinstate the student, then the school will be required to make a payment directly to the LA in which the school is located.

If, following reconsideration, the SGB offers to reinstate the student but the parents decline, no adjustment will be made to the school's budget.

Following reconsideration, the SGB will notify the parents, the Headteacher and the LA of their reconsidered decision and the reasons for this.

### **19. Criminal Investigations**

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, unless specifically instructed to do so by the police.

The Headteacher will give particular consideration when deciding to exclude a student where evidence is limited by a police investigation, to ensure that any decision made is fair and reasonable.

If the SGB is required to consider the Headteacher's decision in these circumstances, they will not postpone the meeting and will decide based on the evidence available.

## **20. Training requirements**

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

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, SGBs 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.

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

## **21. Monitoring and review**

This policy is reviewed every three years by Invictus Education Trust Board of Trustees. We will monitor the application and outcomes of this policy to ensure it is working effectively.