

Cavendish Church of England Primary School



Exclusions Policy

This policy is to be read alongside DfE Statutory Guidance 'Exclusion from maintained schools, academies and pupil referral units in England, September 2017' and the school's Behaviour Policy

Signed: Chair of Governors	
Signed: Headteacher	
Date:	Spring 2021
Date to be Reviewed:	Spring 2022

Our Vision

In our school our Christian vision shapes all we do.

Challenge, Creativity, Compassion: Create a pure heart in me – Psalm 51:10

Our School Vision Statement reflects this commitment as children and staff are taught to challenge inequality, prejudice, bullying and harm; to respond with compassion and sensitivity to individual need and to respect the rights of all individuals to be safe and nurtured within God's world.

We encourage children to respond creatively to internal and external challenges in life, with compassion for others, including consideration for creation and the planet itself. Thus we show how to live justly and with a pure heart, reflecting the teachings of Jesus and God's love within our school environment.

Contents

1. Aims.....	3
2. Legislation and statutory guidance	3
3. The decision to exclude	3
4. Definition.....	3
5. Roles and responsibilities.....	4
6. Considering the reinstatement of a pupil	5
7. An independent review.....	6
8. School registers	6
9. Returning from a fixed-term exclusion	7
10. Monitoring arrangements	7
11. Links with other policies	7
Appendix 1: independent review panel training	1
Appendix 2: The decision to exclude	9
Appendix 3: Equality Law, Section 5: Exclusion from School	10
Appendix 4: A summary of the governing body's duties to review the Headteacher's exclusion decision	11

.....

1. Aims

At Cavendish Church of England Primary School we seek to value and support all God's children and every effort is made to work collaboratively with child, home and external support agencies to achieve this aim. The right to exclude would only be considered after every avenue of support applicable has been explored.

Our school aims to ensure that:

- The exclusions process is applied fairly and consistently
- Due consideration is given to special educational needs (SEN) and protected characteristics as defined by the Equality Act 2010
- The exclusions process is understood by governors, staff, parents and pupils
- Pupils in school are safe and able to learn happy
- Pupils do not become NEET (not in education, employment or training)

2. Legislation and statutory guidance

This policy is based on statutory guidance from the Department for Education: [Exclusion from maintained schools, academies and pupil referral units \(PRUs\) in England](#).

It is based on the following legislation, which outline schools' powers to exclude pupils:

- Section 52 of the [Education Act 2002](#), as amended by the [Education Act 2011](#)
- [The School Discipline \(Pupil Exclusions and Reviews\) \(England\) Regulations 2012](#)
- Sections 64-68 of the [School Standards and Framework Act 1998](#)

In addition, the policy is based on:

- Part 7, chapter 2 of the [Education and Inspections Act 2006](#), which looks at parental responsibility for excluded pupils
- Section 579 of the [Education Act 1996](#), which defines 'school day'
- The [Education \(Provision of Full-Time Education for Excluded Pupils\) \(England\) Regulations 2007](#), as amended by [The Education \(Provision of Full-Time Education for Excluded Pupils\) \(England\) \(Amendment\) Regulations 2014](#)

3. The decision to exclude

Only the headteacher can exclude a pupil from school. A permanent exclusion will be taken as a last resort. Should the headteacher not be on site, they will be contacted by telephone.

A decision to exclude a pupil will be taken only:

- In response to serious or persistent breaches of the school's behaviour policy, **and**
- If allowing the pupil to remain in school would seriously harm the education or welfare of others

Before deciding whether to exclude a pupil, either permanently or for a fixed period, the headteacher will:

- Consider all the relevant facts and evidence, including whether the incident(s) leading to the exclusion were provoked
- Allow the pupil to give their version of events
- Consider if the pupil has special educational needs (SEN) or a protected characteristic. See Appendix 2

4. Definition

For the purposes of exclusions, school day is defined as any day on which there is a school session. Therefore, INSET or staff training days do not count as a school day.

5. Roles and responsibilities

5.1 The headteacher

Informing parents

The headteacher will immediately provide the following information, in writing, to the parents of an excluded pupil:

- The reason(s) for the exclusion
- The length of a fixed-term exclusion or, for a permanent exclusion, the fact that it is permanent
- Information about parents' right to make representations about the exclusion to the governing board and how the pupil may be involved in this
- Where there is a legal requirement for the governing board to meet to consider the reinstatement of a pupil, and that parents have a right to attend a meeting, be represented at a meeting (at their own expense) and to bring a friend

The headteacher will also notify parents by the end of the afternoon session on the day their child is excluded that for the first 5 school days of an exclusion, or until the start date of any alternative provision where this is earlier, parents are legally required to ensure that their child is not present in a public place during school hours without a good reason. Parents may be given a fixed penalty notice or prosecuted if they fail to do this.

If alternative provision is being arranged, the following information will be included when notifying parents of an exclusion:

- The start date for any provision of full-time education that has been arranged
- The start and finish times of any such provision, including the times for morning and afternoon sessions, where relevant
- The address at which the provision will take place
- Any information required by the pupil to identify the person they should report to on the first day

Where this information on alternative provision is not reasonably ascertainable by the end of the afternoon session, it may be provided in a subsequent notice, but it will be provided no later than 48 hours before the provision is due to start. The only exception to this is where alternative provision is to be provided before the sixth day of an exclusion, in which case the information can be provided with less than 48 hours' notice with parents' consent.

Informing the governing board and local authority

The headteacher will immediately notify the governing board and the local authority (LA) of:

- A permanent exclusion, including when a fixed-period exclusion is made permanent
- Exclusions which would result in the pupil being excluded for more than 5 school days (or more than 10 lunchtimes) in a term
- Exclusions which would result in the pupil missing a public examination

For a permanent exclusion, if the pupil lives outside the LA in which the school is located, the headteacher will also immediately inform the pupil's 'home authority' of the exclusion and the reason(s) for it without delay.

For all other exclusions, the headteacher will notify the governing board and LA once a term.

5.2 The governing board

Responsibilities regarding exclusions is delegated to the Pupil Discipline Committee consisting of at least 3 governors. In order to maintain impartiality this may include members from another school's governing body using mutual support agreements with other Schools.

The Pupil Discipline Committee has a duty to consider the reinstatement of an excluded pupil (see section 6).

The governing board has a duty to consider the reinstatement of an excluded pupil (see section 6)

Within 14 days of receipt of a request, the governing board will provide the Local Authority with information about any exclusions in the last 12 months.

For a fixed-period exclusion of more than 5 school days, the governing will arrange suitable full-time education for the pupil. This provision will begin no later than the sixth day of the exclusion.

5.3 The LA

For permanent exclusions, the LA is responsible for arranging suitable full-time education to begin no later than the sixth day of the exclusion. Where the LA 'home authority' is not that of the school, it is the 'home authority' which has this responsibility. (See DfE Guidance)

6. Considering the reinstatement of a pupil

The Pupil Discipline Committee will consider the reinstatement of an excluded pupil within 15 school days of receiving the notice of the exclusion if:

- The exclusion is permanent
- It is a fixed-term exclusion which would bring the pupil's total number of school days of exclusion to more than 15 in a term
- It would result in a pupil missing a public examination

If requested to do so by parents, the Pupil Discipline Committee will consider the reinstatement of an excluded pupil within 50 school days of receiving notice of the exclusion if the pupil would be excluded from school for more than 5 school days, but less than 15, in a single term.

Where an exclusion would result in a pupil missing a public examination, the Pupil Discipline Committee will consider the reinstatement of the pupil before the date of the examination. If this is not practicable, the chair of the governing board (or the vice-chair where the chair is unable to make this consideration) will consider the exclusion independently and decide whether or not to reinstate the pupil.

The Pupil Discipline Committee can either:

- Decline to reinstate the pupil, or
- Direct the reinstatement of the pupil immediately, or on a particular date

In reaching a decision, the Pupil Discipline Committee will consider whether the exclusion was lawful, reasonable and procedurally fair and whether the headteacher followed their legal duties. They will decide whether or not a fact is true 'on the balance of probabilities', which differs from the criminal standard of 'beyond reasonable doubt', as well as any evidence that was presented in relation to the decision to exclude.

Minutes will be taken of the meeting, and a record of evidence considered kept. The outcome will also be recorded on the pupil's educational record.

The Pupil Discipline Committee will notify, in writing, the headteacher, parents and the LA of its decision, along with reasons for its decision, without delay.

Where an exclusion is permanent, the Pupil Discipline Committee decision will also include the following:

- The fact that it is permanent
- Notice of parents' right to ask for the decision to be reviewed by an independent review panel, and:
 - The date by which an application for an independent review must be made
 - The name and address to whom an application for a review should be submitted
 - That any application should set out the grounds on which it is being made and that, where appropriate, reference to how the pupil's SEN are considered to be relevant to the exclusion
 - That, regardless of whether the excluded pupil has recognised SEN, parents have a right to require the LA to appoint an SEN expert to attend the review
 - Details of the role of the SEN expert and that there would be no cost to parents for this appointment
 - That parents must make clear if they wish for an SEN expert to be appointed in any application for a review
 - That parents may, at their own expense, appoint someone to make written and/or oral representations to the panel, and parents may also bring a friend to the review
- That if parents believe that the exclusion has occurred as a result of discrimination, they may make a claim under the Equality Act 2010 to the first-tier tribunal (special educational needs and

disability), in the case of disability discrimination, or the county court, in the case of other forms of discrimination. A claim of discrimination made under these routes should be lodged within 6 months of the date on which the discrimination is alleged to have taken place

7. An independent review

If parents apply for an independent review, the LA will arrange for an independent panel to review the decision of the governing board not to reinstate a permanently excluded pupil.

Applications for an independent review must be made within 15 school days of notice being given to the parents by the Pupil Discipline Committee of its decision to not reinstate a pupil.

A panel of 3 or 5 members will be constituted with representatives from each of the categories below. Where a 5-member panel is constituted, 2 members will come from the school governors category and 2 members will come from the headteacher category.

- A lay member to chair the panel who has not worked in any school in a paid capacity, disregarding any experience as a school governor or volunteer
- School governors who have served as a governor for at least 12 consecutive months in the last 5 years, provided they have not been teachers or headteachers during this time
- Headteachers or individuals who have been a headteacher within the last 5 years

A person may not serve as a member of a review panel if they:

- Are a member of the LA, or governing board of the excluding school
- Are the headteacher of the excluding school, or have held this position in the last 5 years
- Are an employee of the LA, or the governing board, of the excluding school (unless they are employed as a headteacher at another school)
- Have, or at any time have had, any connection with the LA, school, governing board, parents or pupil, or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their impartiality
- Have not had the required training within the last 2 years (see appendix 1 for what training must cover)

A clerk will be appointed to the panel.

The independent panel will decide one of the following:

- Uphold the governing board's decision
- Recommend that the governing board reconsiders reinstatement
- Quash the governing board's decision and direct that they reconsider reinstatement (only when the decision is judged to be flawed)

The panel's decision can be decided by a majority vote. In the case of a tied decision, the chair has the casting vote.

8. School registers

A pupil's name will be removed from the school admissions register if:

- 15 school days have passed since the parents were notified of the exclusion panel's decision to not reinstate the pupil and no application has been made for an independent review panel, or
- The parents have stated in writing that they will not be applying for an independent review panel

Where an application for an independent review has been made, the governing board will wait until that review has concluded before removing a pupil's name from the register.

Where alternative provision has been made for an excluded pupil and they attend it, code B (education off-site) or code D (dual registration) will be used on the attendance register.

Where excluded pupils are not attending alternative provision, code E (absent) will be used.

9. Returning from a fixed-term exclusion

Following a fixed-term exclusion, a re-integration meeting will be held involving the pupil, parents, a member of senior staff and other staff, where appropriate. A member of staff will be present to take Minutes / record any agreed outcomes and a copy of the agreed outcomes will be given to parents/carers of the child.

The following measures may be implemented when a pupil returns from a fixed-term exclusion:

- Putting pupil on report
- Agreeing a behaviour contract
- Use of space and adults to support positive behaviours
- Withdrawal from clubs and after school activities dependent on positive behaviours and reintegration

10. Monitoring arrangements

The Headteacher monitors the number of exclusions every term and reports back to the full governing body. They also liaise with the local authority to ensure suitable full-time education for excluded pupils.

This policy will be reviewed by staff and governors every two years. At every review, the policy will be shared with the governing board.

11. Links with other policies

This exclusions policy is linked to our

- Behaviour policy
- SEND policy and information report
- Equality Act Action Plan
- Health and Safety Policy
- Prevent Duty Action Plan
- Child Protection and Safeguarding Policy
- Safeguarding for pupils with Special Educational Needs and Disabilities

Appendix 1: independent review panel training

The LA must ensure that all members of an independent review panel and clerks have received training within the 2 years prior to the date of the review.

Training must have covered:

- The requirements of the primary legislation, regulations and statutory guidance governing exclusions, which would include an understanding of how the principles applicable in an application for judicial review relate to the panel's decision making
- The need for the panel to observe procedural fairness and the rules of natural justice
- The role of the chair and the clerk of 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 (acts of public authorities unlawful if not compatible with certain human rights) and the need to act in a manner compatible with human rights protected by that Act

Appendix 2: The decision to exclude

At Cavendish Church of England Primary School we firmly believe in supporting every child as an individual. Whilst the following are an indicator of behaviours and actions which might lead to exclusion, each individual case will be decided by taking into consideration a range of factors including contextual information and any identified needs of the child.

Unacceptable behaviours, include but are not limited to:

- Aggression / threat / fear of attack or harm
- Assault / abuse (physical)
- Assault / abuse (verbal) including any discriminating language or acts
- Intimidation
- Repeated behaviours over time ignoring support mechanisms in place
- Theft / vandalism of property

Covid-19 Addendum

Any child who is unable to follow school expectations for safety, eg, social distancing criteria, observing bubble teaching spaces, may have the offer of onsite education withdrawn if it is deemed that the risk to staff and other children is significantly impacted by the child's behaviour. Remote learning would be provided. Where the child has been unable to follow the Covid-19 Risk Assessment criteria due to SEND, Additional Needs this will not be deemed an exclusion and the school will work collaboratively with families to ensure the best support of the child, family and supporting adults in school. It may be that onsite provision can be provided with additional supports such as PPE and every case would be reviewed individually.

However, should a child deliberately engage in behaviours contrary to the Covid-19 Risk Assessment, eg, spitting, deliberate transmission of bodily fluids, then this may be grounds to exclude if the act is deemed an unacceptable behaviour taking into consideration contextual information and identified needs of the child if this then meets the criteria in Section 3 'The decision to exclude'. The school would endeavor to support the child and family via discussion and remote learning to facilitate the child's reintegration.

Appendix 3: Equality Law

Section 5: Exclusion from School is attached

Appendix 4: A summary of the governing body's duties to review the Headteacher's exclusion decision is attached

Annex A from DfE Guidance, September 2017. Available on the following link if reading this policy online:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/641418/20170831_Exclusion_Stat_guidance_Web_version.pdf

GUIDANCE

What equality law means for you as an education provider: schools

Section 5: Exclusion from school

5.1 Introduction

You must not discriminate against or victimise a pupil by excluding them (either temporarily or permanently) from your school.

5.2 What does the Act say?

You must not discriminate against a pupil by excluding the pupil from the school.

You must not victimise a pupil by excluding the pupil from the school.

5.3 How this fits in with other legal obligations on schools in relation to exclusions from school

Nothing in the Equality Act 2010 requires you to act in a way which is inconsistent with other legal obligations relating to exclusions from school. In fact, following the exclusion guidance and any other government guidance is likely to reduce the risk of you discriminating in relation to exclusions.

- **Maintained schools in England** (including grammar schools, Academies, and Pupil Referral Units) must comply with the Department for Education's *Exclusion from maintained schools, Academies and pupil referral units in England: A guide for those with legal responsibilities in relation to exclusion*. This sets out the law relating to exclusions. The exclusions guidance makes it clear that pupils should only be excluded from school as a last resort and that exclusions should only be made on grounds of a pupil's behaviour. Nothing in the Act conflicts with this guidance.
- **Maintained schools in Wales** (including Pupil Referral Units) must comply with *Guidance on Exclusion from Schools and Pupil Referral Units* produced by the Welsh Assembly Government and available from their website (www.wales.gov.uk). The exclusions guidance makes it clear that pupils should only be excluded from school as a last resort and that exclusions should only be made on the grounds of a pupil's behaviour. Nothing in the Act conflicts with this guidance.
- In Scotland, public schools managed by education authorities are subject to Regulations 4 and 4A of The Schools (General) (Scotland) Regulations 1975 and section 28H of the Education (Scotland) Act 1980 which sets out a statutory regime for exclusions. Nothing in the Equality Act conflicts with other legal obligations of schools in relation to exclusions.
- **Independent schools (other than Academies)** do not have to follow the exclusions guidance from DfE, the Welsh Assembly government or Scottish Government and can set their own exclusion policies. However, they must comply with the Equality Act and must not discriminate against pupils by excluding them or subjecting them to any other detriment. Their exclusions policies must not be discriminatory.
- **Academies** must comply with the DfE guidance in the same manner as maintained schools in England have to.

5.4 *You must not discriminate against a pupil by excluding them from school*

What does this mean?

This does not mean that you cannot exclude a pupil with a protected characteristic and there may of course be occasions when it is appropriate to exclude a pupil with a protected characteristic.

However, it does mean that you must not exclude a pupil because of their protected characteristic.

For example:

- An independent school finds out that a pupil has been diagnosed as autistic and immediately excludes him. This would be unlawful direct disability discrimination.
- A Catholic school excludes a pupil who has turned away from the Catholic faith and declared himself an atheist. This would be unlawful direct religion or belief discrimination.

Also, pupils with a protected characteristic must not be excluded for behaviour that pupils without the protected characteristic would not be excluded for.

For example: Two pupils are caught fighting, one who is a boy is excluded, and the other who is a girl is not excluded. This would be unlawful sex discrimination. However, if the school could show that the reason the boy was excluded was that this was the third time he had been in trouble for fighting and it was the first time the girl had been fighting, they would be able to justify the difference in treatment.

It also means that the procedures you use for deciding what punishment a pupil will receive and for investigating incidents must not discriminate against pupils with a particular protected characteristic.

For example: As part of their procedures for investigating and deciding on a punishment, a school arranges for parents or guardians of pupils to come into the school and discuss a course of action with the head teacher. In cases where parents cooperate with the head teacher and are shown to be committed to assisting the pupil to manage their behaviour it is less likely that the pupil will face exclusion.

This procedure may indirectly discriminate against the Gypsy and Traveller pupil whose parents may be less likely to come to the school to speak with the head teacher as they face a range of barriers including a lack of confidence in speaking to school staff and a level of mistrust based on a perception that they are not valued by the school community.

The school reviews their procedures and puts specific measures in place to assist Gypsy and Traveller parents, including an outreach programme with a dedicated member of staff to build trust with the parents so they can get more involved in the school community and their child's education. This is good practice which can help avoid indirect discrimination.

Excluding a disabled pupil for behaviour which arises as a consequence of their disability is likely to result in unlawful disability discrimination unless you can show that the exclusion was a proportionate means of achieving a legitimate aim.

For example: A pupil with ADHD is excluded for his behaviour including refusing to sit at his desk, distracting other pupils by talking and running around during classes. The pupil has been cautioned previously and the school does not see any other option than to exclude him. This is likely to be unlawful discrimination as he was excluded for behaviour which is related to his disability. It is unlikely to be a proportionate means of achieving a legitimate aim as no other efforts were made to support the pupil to manage his behaviour.

In addition, you have a duty to disabled pupils to make reasonable adjustments to your procedures if needed. This might include:

- disregarding behaviour which is a direct consequence of their disability
- making reasonable adjustments to manage such behaviour

- considering alternative, more appropriate punishments, and
- ensuring that a disabled pupil is able to present their case fully where their disability might hinder this.

For example: A pupil with Tourette syndrome involuntarily yells out and sometimes swears in class as a result of his disability. This behaviour is disregarded by the school and he is not punished when this occurs.

In the above example, the school puts an inclusion strategy in place for the pupil with ADHD. This includes providing a support worker, implementing specific behaviour management techniques, and using positive discipline and reward methods. When any behaviour that is related to the pupil's disability does occur, the teacher does not punish him but rather uses one of the agreed strategies to manage it effectively. These reasonable adjustments assist the pupil in managing his behaviour and improve his educational outcomes.

For example:

- A pupil with learning difficulties sometimes becomes disruptive in the classroom and as part of the school's differentiated behaviour management strategy she is given time out of class to work with her support worker and positive rewards on a daily basis for good behaviour rather than punitive punishments such as detention.
- A school wishes to speak with a pupil with autism to find out why he acted aggressively towards other pupils. The pupil finds unfamiliar situations very stressful which has a negative effect on his communication. In order for him to be enabled to best explain his actions, the school works with his support worker so he is prepared for the meeting, and the meeting is held in a familiar space.

5.5 How do I avoid discriminating in relation to exclusions from school?

Reviewing your behaviour and exclusions policies regularly will help you to ensure that they do not inadvertently discriminate against pupils with a particular protected characteristic by including factors that would make it more likely that pupils with that particular protected characteristic would be disciplined or excluded than those without. Indirect discrimination may occur if behaviour or exclusions policies result in a greater proportion of pupils with protected characteristics being disciplined or excluded.

For example: A school's blanket exclusion policy of 'three strikes and you're out' is found to be indirectly discriminating against Gypsy and Traveller pupils. Pupils from these communities are facing extreme levels of racially motivated bullying and are retaliating to the bullying which in turn was not being adequately investigated. The blanket exclusion policy was reviewed and incidents investigated on a case-by-case basis.

If your exclusions and behaviour policies are non-discriminatory (and you take into account your duty to make reasonable adjustments to your policies and procedures for disabled pupils) then you are less likely to exclude a pupil for a discriminatory reason. Those making decisions about discipline and exclusions should be aware of the school's obligations under the Equality Act and take care not to make assumptions that may lead to unlawful discrimination.

The equality duties will assist you in trying to ensure that your policies and procedures do not discriminate against pupils.

For example: Under the equality duties, a school carries out regular monitoring and evaluation of its data on exclusions for pupils with protected characteristics, and finds that a disproportionately high number of pupils who are either temporarily or permanently excluded are black boys and pupils with a learning difficulty. The school behaviour and discipline policies are prioritised for an equality impact assessment (EIA) which uncovers that certain aspects of the policy are discriminating against these pupils. This includes a lack of a differentiated behaviour policy for those on the autistic spectrum and with moderate learning difficulties, and a lack of awareness and training of teachers in relation to how to avoid discriminating against black boys in the classroom. Following the EIA, a new policy is developed, with an action plan and training for staff, and a whole school behaviour and discipline strategy is implemented.

