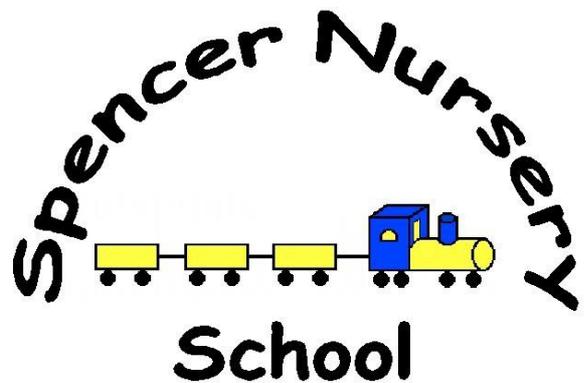


# The Federation of Hackbridge Primary School and Spencer Nursery School

## Exclusions policy



Approved by: The Governing Body

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### 1. Aims

Our school aims to ensure that:

- The exclusions process is applied fairly and consistently
- The exclusions process is understood by governors, staff, parents/carers and pupils
- Pupils in school are safe and happy

### 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, or acting Headteacher, can exclude a pupil from school. A permanent exclusion will be taken as a last resort.

Our school is aware that off-rolling is unlawful. Ofsted defines off-rolling as:

“...the practice of removing a pupil from the school roll without a formal, permanent exclusion or by encouraging a parent/carer to remove their child from the school roll, when the removal is primarily in the interests of the school rather than in the best interests of the pupil.”

We are committed to following all statutory exclusions procedures to ensure that every child receives an education in a safe and caring environment.

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)

### 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/carers

The Headteacher will immediately provide the following information, in writing, to the parents/carers 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/carers’ right to make representations about the exclusion to the Governing Body and how the pupil may be involved in this
- Where there is a legal requirement for the Governing Body to meet to consider the reinstatement of a pupil, and that parents/carers 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/carers 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/carers are legally required to ensure that their child is not present in a public place during school hours without a good reason. Parents/carers 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/carers of an exclusion, where possible:

- 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/carers' consent.

### **Informing the Governing Body and Local Authority**

The Headteacher will immediately notify the Governing Body 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 Body and LA once a term.

## **5.2 The Governing Body**

When required, the Chair of Governors will appoint an exclusion panel consisting of at least 3 governors.

The exclusion panel has a duty to consider the reinstatement of an excluded pupil (see section 6).

Within 14 days of receipt of a request, the Governing Body will provide the LA with information about any exclusions in the last 12 months.

For a fixed-period exclusion of more than 5 school days, the Governing Body 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.

## **6. Considering the reinstatement of a pupil**

The Governors' exclusion panel 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/carers, the Governors' exclusion panel 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 Governors' exclusion panel will consider the reinstatement of the pupil before the date of the examination. If this is not practicable, the chair of the Governing Body (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 Governors' exclusion panel 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 Governors' exclusion panel 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 Governors' exclusion panel will notify, in writing, the Headteacher, parents/carers and the LA of its decision, along with reasons for its decision, without delay.

Where an exclusion is permanent, the Governors' exclusion panel decision will also include the following:

- The fact that it is permanent
- Notice of parents/carers' 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/carers 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/carers for this appointment
  - That parents/carers must make clear if they wish for an SEN expert to be appointed in any application for a review
  - That parents/carers may, at their own expense, appoint someone to make written and/or oral representations to the panel, and parents/carers may also bring a friend to the review
  - That if parents/carers 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/carers apply for an independent review, the LA will arrange for an independent panel to review the decision of the Governing Body 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/carers by Governors' exclusion panel 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 Body 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 Body, 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 Body, parents/carers 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 Body's decision
- Recommend that the Governing Body reconsiders reinstatement
- Quash the Governing Body'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/carers 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/carers have stated in writing that they will not be applying for an independent review panel

Where an application for an independent review panel has been made within 15 school days, the school must wait until the review has been determined, or abandoned, and until the Governing Body has completed any reconsideration that the panel has recommended or directed to carry out, 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/carers, a member of senior staff and other staff, where appropriate.

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

- Agreeing a behaviour contract
- Putting a pupil 'on report'
- A referral to the Primary Vulnerable Pupil Panel for additional support

## 10. Monitoring arrangements

Headteacher monitors the number of exclusions every term and reports back to the governors. They also liaise with the Local Authority to ensure suitable full-time education for excluded pupils.

This policy will be reviewed annually. At every review, the policy will be shared with the GoverningBody.

## **11. Links with other policies**

This exclusions policy is linked to:

- Behaviour policy
- SEN policy and information report

## **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 Bodies 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: Preparation of documentation and information provided to the Disciplinary panel**

The Headteacher's statement and the supporting documents provide the evidence of how the DfE Guidance has been followed and the school's legal duties have been met in reaching the decision to permanently exclude. The statement should be written in straightforward language, avoiding jargon and acronyms, presenting the facts of the case and the order in which things happened, including both the incident itself and the decision-making. The presentation must be accessible to all those who will be party to the governor hearing and potentially an independent review. The Head's statement should cover:

- A summary of the incident(s)
- Evidence of the support offered/provided by the school
- Detail of the decision making process

### **The Head Teacher's Statement - A summary of the incident(s)**

The statement should give a clear summary description of the incident which led to the decision to permanently exclude the pupil. In cases of persistent disruptive behaviour, this will be a description of the 'final straw' incident and an outline of the persistent nature of the behaviour over time. The decision should be based on the balance of probabilities 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'.

The summary of the incident may be subject to scrutiny at both the Disciplinary Panel and an Independent Review Panel, so it is important that the statement carries a factual and neutral tone, clearly distinguishes between fact and opinion, and that it accurately reflects any statements that are present within the pack. It is likely that there will be contentious issues and conflicting accounts within the information provided. Any inconsistencies should be acknowledged and an explanation provided as to why the particular view was taken.

The DfE guidance states that efforts should be made to obtain the pupil's account of events and that they have opportunity to state their case before the decision to exclude. If this has not been possible for some reason it is important that this is referred to in the Head's statement and the reasons for it are explained.

It may be helpful to present information in an attached chronology for easy reference, particularly in cases of persistent disruptive behaviour where there will be several relevant events. References can be made to other documents within a chronology for further detail, but presenting the 'story' of events in a chronology can be helpful.

### **The Headteacher's Statement –Support offered/provided by the school**

It is important that the governors have clear evidence of the support and interventions the school has offered and or provided. The supportive measures could be summarised in the Headteacher statement and detailed information about support/interventions/referrals to other agencies could entered in the chronology and supporting documents. This should demonstrate how the school has actively worked to avoid exclusion and how the pupil's educational and social needs have been assessed and responded to.

As part of this it should be demonstrated that the school has followed its own policy and the SEN Code of Practice in assessing and meeting SEN need. The pupil's SEN status should be made clear in the statement and supporting documentation, including recent reviews, should be provided.

If a specific type of support or intervention is cited, ensure the documented evidence is provided in the pack to evidence it.

The governors will need to understand the impact of interventions/support, to understand how relevant they were to the needs of the pupil and what the outcome was e.g.

A) "Hub referral made in May" - does not offer sufficient detail

B) "A Hub referral was made on 2<sup>nd</sup> May 2019 following a meeting with the family about poor attendance patterns. The Hub has worked for 2 months on establishing routines in the home. The impact has been minimal as the family have not met with the Hub regularly. Attendance has not improved" - demonstrates how appropriate the referral was; the focus of the work, and the level of engagement/impact.

Similarly, for any meetings or assessments either within school or by external agency, the governors will need to see the agreed actions and evidence of how these have been put into practice e.g.

A) Education Psychology referral made - does not offer sufficient detail

B) Education Psychology referral made on 14<sup>th</sup> December 2019, pupil attended 2 appointments with the EP in school on 8<sup>th</sup> February 2020 and 21<sup>st</sup> February 2020. Recommendations of the report were to support pupil in small groups of up to 4 and to offer alternative activities at break times with a chosen friend; implement a reward system for good choices based around their interest in trains; and implement the team teach strategies to de-escalate situations of stress and where required follow a positive handling plan to intervene if there are incidents of physical violence towards others. Class teacher and SENCO met with parents to review IEP on 15<sup>th</sup> March 2012. Some positive response to the reward system observed and better concentration and reduced anxiety within the small groups - demonstrates the timescale of the referral, engagement, recommendations, how these were implemented by the school and the impact.

## The Headteacher's Statement – The decision making process

The governing body will need to see how the DfE Guidance was followed in reaching the decision to permanently exclude. The Headteacher's statement should demonstrate to the governors how the decision to permanently exclude was taken:

- By the Headteacher (or acting headteacher, section 579(1) of the Education Act 1996)
- On disciplinary grounds
- In response to serious or persistent breaches of the school's behaviour policy and/or of health and safety requirements; **and** where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school
- In line with administrative law i.e. lawful, rational, reasonable, fair and proportionate
- Based on the balance of probabilities that it is more likely that the fact is true than not
- Ensuring that in the school's policies and practice a pupil has not been discriminated against
- With due regard to the SEN code of practice
- After (where practical) the pupil concerned has had opportunity to present their case, and taking into account any contributing factors and mitigating circumstances
- Ensuring that early intervention has been implemented to address the underlying causes of behaviour including SEN or disability in order to prevent the incident(s)

The guidance is clear that permanent exclusion should always be the last resort and that early intervention and multi-agency working should be used to address underlying causes of disruptive behaviour in addition to assessment of SEN need.

Governors will need to be satisfied that the decision to permanently exclude has been taken rationally; in fair proportion to the incident(s) and that all alternatives were considered even if they were deemed to be unsuitable. Ensure that the Headteacher's statement explains what alternatives were considered, and why they were deemed inappropriate.

Document any advice sought prior to the decision being made, what the advice was and if/how it was used. If the pupil is from a group at high risk of exclusion, it must be demonstrated to governors what extra support was considered to identify their specific needs and reduce their risk of exclusion.

## **Supporting documents – Presenting appropriate information to evidence the Headteacher's statement**

Evidence will need to be provided to the Disciplinary Panel of the statements made in the Headteacher's statement.

### Permanent exclusion documents

Include the notification of permanent exclusion sent to the Local Authority, the letters sent to the parent informing them of the permanent exclusion and any fixed term exclusion made previously (particularly in the case of persistent behaviours). These should be presented in date order so the sequence of events is clear.

### Witness statements

It is possible for students to provide handwritten statements following an incident, the expectation on children to provide these is at the school's discretion and should take into account their age and understanding. If a verbal statement is taken, it should be written out in full by those who were present. All statements should be named, signed and marked with the date and time of their writing.

School staff can be asked to provide written statements following an incident. Staff should provide a neutral factual account of the incident in clear language. All statements should be named, signed and marked with the date and time of their writing.

It is helpful to encourage students and staff alike to give as much detail as possible including where they were at the time of the incident, what they themselves saw or heard directly and what they believe to have happened - distinguishing between fact and opinion. It may be appropriate for a student or staff member to express how they felt at the time of the incident, but the overall statement should aim to be balanced and factual.

Typed versions of the handwritten statements could be included in the pack to accompany the originals to assist parties in reading them. When presenting statements in the pack, the question of providing anonymity to students and staff is something that must be considered. Each situation must be judged on its individual merits and an explanation should be provided as to why statements were made anonymous. Where anonymised, statements should be marked up pupil A, B, C or pupil 1,2,3 for example, to enable parties to distinguish between statements.

### SEN documents

The guidance refers to SEN on a number of occasions, the factors to be considered when taking the decision to exclude, the fact that pupils with SEN are more likely to receive exclusions and therefore additional provision should be made to prevent their exclusion, and that the school has a duty to give due regard to the SEN Code of Practice and the school's own SEN policy.

Should the case be heard at an independent review panel, the parent may request a SEN expert, even where the school has not recognised the child has SEN. The SEN expert's role is to advise the panel on *'how SEN could be relevant to the exclusion'* and *'whether the school acted reasonably in relation to its legal duties when excluding the pupil'*.

It is therefore imperative that it is evidenced how the SEN code of practice has been followed in relation to the pupil, what assessments have been made, what subsequent action was taken, and how this was reviewed and managed over time.

Ensure that the following documents are included where they exist for a pupil:

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- SEN Statement
- Individual Education Plan (IEP)
- Individual Behaviour Plan (IBP)
- Pastoral Support Plan(PSP)
- Positive Handling Plan
- School provision map
- Targeted interventions
- Assessments
- SEN Policy

#### Photographs/video evidence

Video or photographic evidence may have been considered when taking the decision to exclude, either from school CCTV or from other sources e.g. mobile phones. If any photographic or video evidence is being submitted, the confidentiality of other students who may feature must be considered. Consult the Data Protection policy on using images of children i.e. whether the pupil's parents need to agree, and consider whether images should be edited to remove other pupils or protect their identity.

#### Third party reports

The governors will want to see what advice has been given and how the school has implemented that advice. If there are reports from other agencies e.g. CAMHS or Education Psychology, agreement may need to be obtained to share the documents with the meeting. In addition to the evidence in any SEN paperwork, the chronology can be used to show when things were implemented and their impact.

#### Social care

Any information from the social care aspect is confidential and strict consideration should be given to the inclusion of that information. Usually it is sufficient to document when meetings have been held and any action points that were given to the school or involving education – this can be done in the chronology.

#### Safeguarding

Any information from the safeguarding aspect is confidential and strict consideration should be given to the inclusion of that information. Requests or referrals may be entered in the chronology if they are relevant in a wider sense to the exclusion. However, if sharing that information would place someone at risk or if the family is not aware of the contact, advice should be sought on this matter.

#### Risk Assessment

Where there are concerns about a pupil's risk to themselves or others, a risk assessment should be completed; for a serious one-off, there may have only been cause for concern at the time of the incident however, it would be good practice to complete a risk assessment as part of the decision- making on whether or not to permanently exclude the pupil. Any risk assessments should be included in the pack.

#### Policies

Include the behaviour and SEN policy in the pack, ensuring that the policies were in date and in use at the time the decision was taken to permanently exclude. If the policies have been revised since, the version that was in use at the time of the incident/decision should be included.

If there are any additional policies that would be relevant e.g. specific policy on drugs, then include those policies also. Governors may wish to know how the policies have been communicated with pupils and parents, and how a parent and pupil would have had access to these policies.

### **Presenting the pack**

The documents or 'pack' is sent to the parents, the governors and, on occasions, the local authority. As the information is confidential it should be considered how to securely send this to all parties.

The pack should be available to all parties at least 5 days in advance of the meeting. It is helpful to have identical sets of documents with numbered pages so that everyone in the meeting can refer to the same pages for reference.

Hard copies should be available at the meeting.

The key presentation points are:

- 1) Remove any references to other children (peers or siblings) unless they directly relate to the incidents
- 2) Consider how accessible the information is e.g. a recipient could have a communication disability, English as a second language or may not read with confidence
- 3) Include a contents/index page with a clear list of the documents enclosed and corresponding page numbers
- 4) Organise the bundle so that the Headteacher's Statement, Permanent Exclusion Letter to Parents, and the Chronology are near the front
- 5) Consider providing typed versions of handwritten statements/information, but still include copies of the originals

### Checklist of documents

This checklist can be adapted to make an index for the document pack.

| Document/Information  | Page |
|---|------|
| <b>Information about the Permanent Exclusion</b>                |      |
| Permanent Exclusion Letter to Parents                           |      |
| Headteacher's Statement   |      |
| Chronology of events  |      |
| <b>General exclusion/attendance information</b>                 |      |
| Record of all past Exclusions                                   |      |
| Letters to parents regarding all past exclusions                |      |
| Reintegration meeting minutes from past exclusions              |      |
| Record of Attendance  |      |
| <b>Evidence relating to the permanent exclusion</b>             |      |
| Pupil's statement(s)  |      |
| Witness statements  |      |
| Risk Assessments  |      |
| Behaviour Policy  |      |
| <b>SEN support</b>  |      |
| SEN Policy  |      |
| SEN Statement   |      |
| SEN Reviews   |      |
| Discussions with SEN Officer and recommendations                |      |
| IEP Individual Education Plan                                   |      |
| IBP Individual Behaviour Plan                                   |      |
| PSP Pastoral Support Plan                                       |      |
| PHP Positive Handling Plan                                      |      |
| Provision map   |      |
| <b>External agency support</b>                                  |      |
| Referrals to outside agencies and outcomes for pupil            |      |
| Discussions with external professionals and the recommendations |      |