



Highgate Hill House School

Exclusions Policy & Procedure

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Highgate Hill House School is committed to safeguarding and promoting the welfare of children and young people and expects all staff and volunteers to share this commitment

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Introduction

This policy meets the requirements published in the revised version of *Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units*, which was issued in January 2003 (Ref: DfES/0087/2003), and which replaced Chapter 6 and Annex D of Circular 10/99, issued in July 1999, and the letters subsequently amending it. It takes account of recent changes in legislation and includes new material on preventing, and alternatives to, exclusion and reintegrating excluded pupils (replacing chapter 5 of Circular 11/99), which draw upon the good practice reported to the Department by schools and LEAs.

It is written with regard to the 2002 Education Act as amended by the Education Act 2011, the school discipline (Pupil Exclusions and Reviews) (England) regs 2012 and Education and Inspections act 2006. It also includes sections on unofficial exclusions and the ways in which pupils can legally be removed from school premises.

Definitions

In this guidance, 'parent' means anyone who has parental responsibility for, or care of, a child. Where a child is the subject of a care order, the local authority that has parental responsibility for the child is entitled to determine to what extent the parents exercise their parental responsibility.

PART 1: PROMOTING POSITIVE BEHAVIOUR AND EARLY INTERVENTION

Introduction

1 Exclusion will be the last resort after a range of measures have been tried to improve the pupil's behaviour. A wide range of strategies are in place to address the difficult behaviours exhibited by our pupils at times. It is only in extreme cases that these could ultimately lead to exclusion. The decision to exclude a pupil must be lawful, reasonable and fair.

Managing behaviour in school

2 Pupils, all school staff and parents/carers are aware of the standards of behaviour expected of pupils, and the range of sanctions. These are clearly stated in the school's behaviour policy and are outlined in the prospectus.

3. Effective policies, procedures and training minimise the number of pupils whose extreme behaviours place them at risk of exclusion. Preventative measures used to work with pupils include:

- engaging with their tutor, link worker and other staff in school or boarding area;
- a change of teaching set or class where this is possible;
- curriculum alternatives at Key Stage 4, including attendance at a further education college or another form of alternative provision;
- temporary teaching on a one to one in the residential home while procedures are put in place to manage the extreme behaviours;
- in extreme cases a short term move to a smaller unit may take place

- where education takes place on site.
- allocation of additional support in school;
 - referral to a specific support service, such as the Child and Adolescent Mental Health Service.

4. The school will amend risk assessments and IEP targets to support the improvement in behaviour.

PART 2: REMOVING PUPILS FROM A SCHOOL SITE AND THE DECISION TO EXCLUDE

Removing pupils from a school site

5 Many pupils receive some of their education at locations other than the site of the school at which they are registered. For example, they participate in school journeys, field trips, work experience and provision at further education colleges. These are routine arrangements for groups of pupils. However, there are three exceptional circumstances in which individual pupils may be removed from school sites, namely where:

- a) There is sufficient evidence that a pupil has committed a disciplinary offence. In these circumstances the pupil may be excluded from school for a fixed period or permanently. This guidance specifies procedures for exclusion;
- b) A pupil is accused of a serious criminal offence but the offence took place outside the school's jurisdiction. In these circumstances the Educational Lead/Teacher in Charge and head may decide that it is in the interests of the individual concerned and of the school community as a whole for that pupil to be educated off site for a fixed period, subject to review at regular intervals. This is not exclusion.
- c) A pupil's presence on the school site represents a serious risk to the health or safety of other pupils or school staff. In these circumstances the Educational Lead/Teacher in Charge may send the pupil home that day after consultation with the parents and the care staff. This is not exclusion and may only be done for medical reasons.

These are the **only** circumstances in which pupils may be legally removed from the school site.

The decision to exclude

6 A decision to exclude a pupil will only be taken:

- a) In response to serious breaches of the school's behaviour policy; and
- b) If allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.

7. Only the Head teacher may take the final decision to exclude a pupil from school).

8. A decision to exclude a child **permanently** is a serious one. It will usually be the final step in a process for dealing with disciplinary offences following a wide range of other strategies, which have been tried without success. It is an acknowledgement by the school that it has exhausted all available strategies for dealing with the child and should normally be used as a last resort.

9. This is a complex procedure as the majority of pupils placed within Highgate Hill House

School are vulnerable. All have an EHC plan and many also have an allocated social worker. It is essential to keep all stakeholders working with the pupil informed prior to such a drastic step being taken.

10. There will, however, be exceptional circumstances where, in the Headteacher's judgment, it is appropriate to permanently exclude a child for a first or 'one off' offence. These might include:

- a) serious actual violence against another pupil or a member of staff;
- b) serious sexual abuse or assault;
- c) supplying an illegal drug;

The school will consider whether or not to inform the police where such a criminal offence has taken place. They will inform the pupil's parent /carer, social worker, link worker. These instances are not exhaustive, but indicate the severity of such offences and the fact that such behaviour can affect the discipline and well-being of the school community.

11 In cases where a Headteacher has permanently excluded a pupil for:

- a) One of the above offences; or
- b) Persistent and defiant misbehaviour including bullying (which would include racist or homophobic bullying) or repeated possession and/or use of an illegal drug on school premises;

the Secretary of State would not normally expect an Independent Appeal Panel to reinstate the pupil.

Drug-related exclusions

12 It is highly unlikely that a pupil will be excluded for a drug related offence. In making a decision on whether or not to exclude for a drug-related offence, the Headteacher will consider the precise circumstances of the case and the evidence available. In some cases, fixed period exclusion will be more appropriate than permanent exclusion. In more serious cases, an assessment of the incident should be made against criteria set out in the school's policy. This should be a key factor in determining whether permanent exclusion is an appropriate course of action.

13 The school has a policy that covers not only illegal drugs but also legal drugs - volatile substances (those giving off a gas or vapour which can be inhaled), and over the counter and prescription medicines - which may be being misused by pupils. This will say, for example, that no drug should be brought in to school without the school's knowledge and approval. Where legal drugs are concerned, again an assessment of the seriousness of the incident is necessary before deciding what action to take.

Factors to consider before making a decision to exclude

14 Exclusion will not be imposed in the heat of the moment, *unless there is an immediate threat to the safety of others in the school or the pupil concerned*. Before deciding whether to exclude a pupil, either permanently or for a fixed period, the Educational Lead /Teacher in Charge and Headteacher will:

- a) Ensure that a thorough investigation has been carried out;
- b) Consider all the evidence available to support the allegations, taking

account of the school's behaviour and equal opportunities policies, and, where applicable, the Race Relations Act 1976 as amended and the Disability Discrimination Act 1995 as amended;

- c) Allow the pupil to give his or her version of events;
- d) Check whether the incident may have been provoked, for example by bullying, including homophobic bullying, or by racial or sexual harassment; and
- e) If necessary, consult others, but not anyone who may later have a role in reviewing the decision.

15 The standard of proof to be applied is the balance of probabilities, i.e. if it is more probable than not that the pupil did what he or she is alleged to have done, then the pupil may be excluded. However, the more serious the allegation, the more convincing the evidence substantiating the allegation needs to be.

16 Where a police investigation leading to possible criminal proceedings has been initiated, the evidence available may be very limited. However, it may still be possible for the Educational Lead/Teacher in Charge to make a judgment on whether to exclude the pupil.

Exclusion is not appropriate in the following situations

17 Exclusion should not be used for:

- a) Minor incidents such as failure to complete work;
- b) Poor academic performance;
- c) Lateness or truancy;
- d) Pregnancy;

Unofficial Exclusions

18 If the Headteacher is satisfied that, on the balance of probabilities, a pupil has committed a disciplinary offence and the pupil is being removed from the school site for that reason, formal exclusion is the only legal method of removal. **Informal or unofficial exclusions are illegal** regardless of whether they are done with the agreement of parents or carers.

Removal of pupils from school in exceptional circumstances

19 There may be exceptional circumstances in which the Headteacher may need to remove pupils from the school site when exclusion would be illegal. An example is where a pupil is accused of committing a serious criminal offence which took place outside the School's jurisdiction (perhaps during a weekend or school holiday and off the site) and/or there is insufficient evidence to warrant exclusion. The Headteacher would be unable to exclude a pupil in this situation.

20 However, there may be compelling reasons for removing that pupil from the school premises pending the outcome of a police investigation. The Headteacher can authorise leave of absence for a fixed period, with the carers/social workers/parents' agreement, or, exercising powers delegated under section 29(3) of the Education Act 2002, can arrange for the pupil to be educated

elsewhere (without social worker/parental consent if deemed necessary, although they must be notified). However, such education elsewhere must be arranged for the purposes of receiving any instruction or training included in the secular curriculum of the school. Whether the pupil has been granted leave of absence or is being educated elsewhere, the school must ensure that the pupil's full-time education continues while off site. Any such arrangements do not amount to a formal exclusion from school and should be kept under periodic review.

Removal of pupils on health and safety grounds

19 The Headteacher may send a pupil home, after consultation with the carers, on health and safety grounds in circumstances where he or she poses an immediate and serious risk to the health or safety of other pupils or staff. **This may only be done for medical reasons.** An example of where it would be legitimate is where a pupil is known to be suffering from a notifiable disease which others might catch. This is not an exclusion.

Length of fixed period exclusions

20 The regulations allow for pupils to be excluded for one or more fixed periods not exceeding 45 school days in any one school year. The limit of 45 school days applies to the pupil and not to the institution. Therefore, any days of fixed period exclusion served by the pupil in any school in the same school year will count towards the total. It is important therefore that, when a pupil transfers into the school during the academic year, records of the fixed period exclusions a pupil has received so far during the current academic year are also transferred promptly. However, individual fixed period exclusions should be for the shortest time necessary, bearing in mind that exclusions of more than a day or two make it more difficult for the pupil to reintegrate into the school. Ofsted inspection evidence suggests that 1-3 days is often long enough to secure the benefits of exclusion without adverse educational consequences. Exclusions may not be given for an unspecified period, for example until a meeting can be arranged. Such a practice amounts to an indefinite exclusion for which no legal arrangements exist.

Considerations following a fixed period exclusion

21 The school will continue to educate while the pupil is on the roll, and during a fixed term exclusion. In all cases of more than a day's exclusion, work should be set and marked. If the Headteacher is considering whether to exclude a pupil for a longer fixed period, for example for more than 15 school days, s/he should plan:

- a) How the pupil's education will continue during the period of exclusion;
- b) How the time might be used to address the pupil's problems;
- c) What educational arrangements will best help with the pupil's reintegration into the school at the end of the exclusion.
- d) The Headteacher will arrange a reintegration meeting with the care staff and social worker following the expiry of a fixed period exclusion. This should be an opportunity to discuss how best the pupil can return to school. However, a fixed period exclusion will not be extended if such a meeting cannot be arranged in time as such a meeting is not a statutory requirement.

Procedures for review and appeal

22 If a local authority wishes to appeal against an exclusion then this must be made in writing to the Headteacher.

Procedures following permanent exclusion

- 23 In the case of a permanent exclusion the pupil will remain on the roll at the school until any appeal is determined, again, while the pupil is on the roll at the school it is the responsibility of the school that his or her education continues. Once a permanent exclusion has been upheld meetings will take place with all relevant parties to discuss the next steps that need to be taken with regard to the placement of the pupil.

Behaviour outside school

- 24 Pupils' behaviour outside school on school business – for example, on school trips, away school sports fixtures, or work experience placements - is subject to the school's behaviour policy. Bad behaviour in such circumstances will be dealt with as if it had taken place in school. For behaviour outside school, but not on school business, the Educational Lead /Teacher in Charge may exclude a pupil if there is a clear link between that behaviour and maintaining good behaviour and discipline among the pupil body as a whole. This will be their matter of judgment. Pupils' behaviour in the immediate vicinity of the school can be grounds for exclusion.
- 25 School staff who intervene to control the behaviour of pupils on public transport or in public places must be mindful of the fact that they are not empowered to use measures beyond their normal common law powers as citizens.

Pupils with special educational needs (SEN)

- 26 Statutory guidance on identifying, assessing and making provision for pupils with SEN, including those with behavioural, social and emotional needs, is given in the Special Educational Needs Code of Practice (revised 2014). The school has regard to this guidance. Early identification and intervention, accurate assessment and the arrangement of appropriate provision to meet pupils' SEN usually leads to better outcomes.
- 27 Other than in the most exceptional circumstances, the school will avoid permanently excluding pupils with EHC plans. They will also make every effort to avoid excluding any pupil as all pupils are on the SEN register and those children who are in the care of the Local Authority. Due to the nature of the school the Educational Lead/Teacher in Charge will be aware that the school is having difficulty managing a pupil's behaviour well before the situation has escalated. Every practicable means will be used to maintain the pupil in school, including seeking other professional advice and, where appropriate, asking the local/placing LEA to consider carrying out a statutory assessment. For a pupil with a statement, where this process has been exhausted, the school should liaise with the home LEA about initiating an interim annual review of the pupil's statement.

Disabled pupils

- 28 The school has a legal duty under the Disability Discrimination Act 1995, as amended, not to discriminate against disabled pupils by excluding them from school because of behaviour caused by their disability. This applies to both permanent and fixed period exclusions. The definition of disability under the Act covers pupils with physical, sensory, intellectual or mental impairments. Discrimination means treating disabled pupils less favourably than other pupils without justification. It also means failing to take reasonable steps to ensure that disabled pupils are not placed at a substantial disadvantage compared to their non-disabled peers. What constitutes a reasonable step will depend on the circumstances of each case. The Disability Rights Commission (DRC) has published a Code of Practice which explains and illustrates schools' duties to disabled pupils, including in relation to exclusions. The school follows this guidance.

29 Appeals against permanent exclusion, where discrimination is alleged to have taken place, or the disabled pupil has been placed at a substantial disadvantage by the exclusion procedures, will be heard by an independent appeal panel, comprised by the Chair of Governors. The school will be required, in disability discrimination claims, to demonstrate that their actions were justified and that there are no reasonable adjustments to their policies and practice they might have made to prevent the incident which led to the exclusion.

Race Relations

30 The law places a general duty on all schools to have due regard to the need to eliminate unlawful racial discrimination and promote equality of opportunity and good relations between people of different racial groups. The law also places a number of specific duties on schools, including duties to assess the impact of policies and to monitor the operation of those policies on pupils, parents and staff from different racial groups.

This legislation requires schools to take steps to ensure that they will not discriminate against pupils on racial grounds when making a decision about whether to exclude a pupil.

Children in Public Care.

31 In cases where a child in public care is excluded, anyone who is legally defined as a parent has the right to make representations and to appeal. The definition of a parent for the purposes of the Education Acts is broadly drawn and includes any person who has parental responsibility (which includes the Local Authority where they have a care order in respect of the child) and any person (for example, a foster parent) with whom the child lives. These are in addition to the child's birth parent(s). This means that there could be a number of people whom the school has to notify about exclusions and who will have the right to make representations and appeal.

PART 3: PROCEDURE FOR EXCLUDING A PUPIL: ROLE OF THE HEADTEACHER

Informing parents/carers, social worker about the exclusion

32 Whenever the decision is taken to exclude a pupil, the parents/carers and social worker must be notified immediately ideally by telephone, followed up by a letter within one school day. The letters of notification of exclusion state:

- a) for a fixed period exclusion, the precise period of the exclusion;
- b) for a permanent exclusion, the fact that it is a permanent exclusion;
- c) the reasons for the exclusion;
- d) the parent/social worker's right to make representations about the exclusion to the Educational Lead and Operations Manager.
- e) the person whom the parent/social worker should contact if they wish to make such representations

33 The Letter will also mention:

- a) the latest date by which the management team must meet to consider the circumstances in which the pupil was excluded (except where the exclusion is for a total of not more than 5 school days in any one term, and would not result in the pupil missing a public examination);

- b) the parent/social worker's right to see and have a copy of the child's school record upon written request to the school;
- c) in the case of a **fixed period** exclusion, the date and time when the pupil should return to school;
- d) if the exclusion is **permanent**, the date it takes effect and any relevant previous history;
- e) the arrangements made for enabling the pupil to continue his or her education, including the setting and marking of work. It is the parent's/carer's responsibility to ensure that work sent home is completed and returned to school;
- f) The right to appeal to an Independent Appeal Panel, together with the name and address of the person to whom any notice of appeal should be sent

34 All exclusion cases should be treated in the strictest confidence.

35 In exceptional cases - usually where further evidence has come to light – a fixed period exclusion may be extended, or converted to a permanent exclusion. In such cases the Headteacher must write again to the parents/social workers explaining the reasons for the change.

Informing the home LEA

36 Within 1 school day the Headteacher must inform the home LEA of:

- a) a permanent exclusion
- b) an exclusion which would result in the pupil being excluded for more than five school days in any one term
- c) an exclusion which would result in the pupil missing a public examination

PART 4: INDEPENDENT APPEAL PANEL

38 If requested to do so by the parents, the governing body must consider the reinstatement of an excluded pupil within 50 school days of receiving notice of the exclusion if a pupil would be excluded from school for more than five school days, but not more than 15, in a single term.

Notifying parents/social worker

39 When a permanent exclusion is upheld, the decision letter (model letter 5) to the parent/social worker must state the reasons for the decision, give the last day for lodging an appeal and explain that the grounds for the appeal should be set out in writing. Parents/Social Workers have a right to an independent appeal panel hearing even if they did not make a case to, or attend, the original meeting.

40 Any appeal made after the latest date for lodging an appeal will be out of time and will be rejected.

The timing of the hearing

41 An appeal panel must meet to consider an appeal no later than the 15th school day after

the day on which the appeal was lodged. However, if necessary, the panel may decide to adjourn the hearing if, having regard to the particular circumstances of the case, they consider that it would not be appropriate for them to proceed to determine the appeal. This might include circumstances where more information is awaited. If the parent/social workers request a hearing date later than the 15th school day, the clerk may consult the panel members by telephone or email about the request and, if the members agree, a later hearing date may be set and the panel will be deemed to have adjourned the hearing. The panel may adjourn on more than one occasion if necessary.

Composition of appeal panels

42 Highgate Hill House School will constitute an appeal panel and appoint a clerk. The panel will have three members:

- a) the chair must be a lay member, defined as someone who has not worked in a school in any paid capacity, although they may be (or have been) a school governor or work (or have worked) in a school as a volunteer. The chair could be someone with a legal qualification. This will be an independent person outside of the company to be decided.
- b) one must be, or have been within the last 5 years, a head teacher

43 A person may not serve as a member of an appeal panel if they:

- a) are a member of the Local Education Authority or a member of staff of the excluding school;
- b) are an employee of the Local Education Authority unless they are employed as a head teacher in another school in the same LEA or as a
- c) have, or at any time have had, any connection with an interested party, or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their ability to act impartially;

44 It is very important that we ensure that all panel members and clerks receive suitable training and that the chair is trained in the specific chairing skills the panel requires. The Department Children Schools and Families has issued a training pack for exclusion appeal panel members (for details of how to obtain a copy see the related documents section at the end of Part 7 on page 62.) The Council on Tribunals has emphasised the importance of training for all those involved in the exclusion process.

Role of the clerk

45 The clerk provides an independent source of advice on procedure for all parties. Further information on the role of the clerk can be found in Checklist 9 of the ISCG training pack (<http://www.teachernet.gov.uk/docbank/index.cfm?id=3814>). The clerk should not have served as clerk to the governing body hearing.

46 Clerks will receive training, and will need to keep up to date with developments in case law and changes in legislation and guidance. Over time clerks are likely to develop experience in the conduct of both exclusion and admission appeals. If, exceptionally, the clerk has not received

training and no member of the panel is legally qualified, the authority should consider whether the panel should have an independent source of legal advice, for example a solicitor. In any event this is desirable where the appellant (the parent/social worker) is legally represented.

In advance of the hearing

47 Highgate Hill House School must take reasonable steps to find out when the parent/social workers and others entitled to attend the hearing would be available in order to ensure that all parties are able to attend. They must also arrange a suitable venue for hearing the appeal in private. It should be neutral, accessible, and have good access for people with disabilities. Appeal hearings should never be held at the excluding school.

48 The following are entitled to attend a hearing, submit written representations and address the panel:

- a) the parent/social worker (or, if aged over 18, the pupil), who may be represented or accompanied by a legal or other representative;
- b) The Headteacher
- d) a member of the Council on Tribunals is entitled to attend as an observer. The Company would notify them of forthcoming appeals (address is: 81 Chancery Lane, London, WC2A 1BQ).

An excluded pupil under the age of 18 should normally be allowed to attend the hearing and to speak on his or her own behalf, if he or she wishes to do so and the parent/social worker agrees. The panel cannot compel witnesses to attend the hearing.

49 The clerk should advise the parent/social worker of his or her right to be accompanied by a friend or representative, including a legal representative or advocate. If the parent/social worker wishes to bring more than one friend or representative, the clerk should seek the panel's agreement in advance, having regard to a reasonable limit on numbers attending the hearing.

50 The clerk should also ascertain whether an alleged victim wishes to be given a voice at the hearing either in person, through a representative or by submitting a written statement.

51 When the position is clear, the clerk must give all parties details of those attending and their role and notify them of the order of hearing.

52 The clerk should circulate all written evidence to all parties 5 working days before the hearing. This must include the statement of decision by the management team and the notice of appeal from the parent/social worker which gives the grounds for the appeal. The head teacher/teacher in charge and management team may also make written representations. If any of the parties intend to raise matters or produce documents at the hearing that are not covered by the statement of decision or the notice of appeal, they should be asked to submit these to the clerk in good time before the hearing.

Conduct of the appeal hearing

53 It is for the appeal panel to decide how to conduct the proceedings which should be reasonably informal so that all parties can present their case effectively. Tape-recording of the hearing should be avoided unless there is good reason and all parties agree.

54 In opening the appeal hearing the chair should outline the procedure to be followed and explain to all parties that the panel is independent from both the school. The chair should explain

that the panel needs to have regard to legislation and DfE guidance in its conduct and in reaching its decision.

55 Following introductions, the clerk should explain the order in which the parties entitled to be heard will state their case (as previously notified to them) and that there will be an opportunity for questioning by the other parties after each presentation. The chair should then lead the panel in establishing the relevant facts. Panel members may wish to ask questions to clarify an issue or to elicit more information. Questions from the panel should generally be taken at the end of each party's statement and following questioning by the other parties.

56 Sufficient time must be allowed for each party to put their case. The panel should ensure that the parent/social worker (or, if aged over 18, the pupil) is given the opportunity to comment on relevant information obtained from the LEA or governing body. Care must be taken to ensure that no party attending the hearing is present alone with the appeal panel in the absence of any other party.

57 An appeal cannot continue if the number of panel members drops below three at any stage. In this event, the panel may need to adjourn until its quorum is restored. Once an appeal has begun, no panel member may be substituted by a new member for any reason. Accordingly, where a member cannot continue as a result of illness or death a new panel will have to be constituted. In the case of a five-member panel, however, the panel may continue in the event of the death or illness of one (or even two) of its members, provided all three categories of member are still represented. In the case of a panel being reduced to four members and them being deadlocked, the chair has the casting vote.

Evidence and witnesses

58 Where the school's case rests largely or solely on physical evidence, and where the facts are in dispute, then the physical evidence, if practicable, should be retained and be available to the panel. Where there are difficulties in retaining physical evidence, photographs or signed witness statements are acceptable.

59 All parties may put forward new evidence about the event that led to the exclusion, including evidence that was not available to the Headteacher or the governing body. All parties should be given the opportunity to respond to any such new evidence which has been put forward. However, the school may not introduce new reasons for the exclusion.

60 To reach a decision, the panel will generally need to hear from those directly or indirectly involved. The school may wish to call witnesses who saw the incident that gave rise to the exclusion. These may include any alleged victim or any teacher other than the head teacher who investigated the incident and interviewed pupils. A teacher may be accompanied by a friend or representative.

61 In the case of witnesses who are pupils of the school, it will normally be more appropriate for the panel to rely on written statements. Pupils may appear as witnesses if they do so voluntarily and with their parent's consent. Panels should be sensitive to the needs of child witnesses to ensure that the child's view is properly heard.

62 All written witness statements must be attributed and signed and dated, unless the school has good reason to wish to protect the anonymity of pupils, in which case they should at least be dated. The general principle remains that an accused person is entitled to know the substance and the source of the accusation. The panel must consider what weight to attach to written statements, whether made by adults or pupils, as against oral evidence. They should bear in mind that a written statement may not encompass all the relevant issues, nor can the author be interrogated.

63 The calling of character witnesses is at the discretion of the panel, but should be allowed unless there is good reason to refuse.

64 It is for the panel to decide whether any witnesses should stay for the rest of the hearing.

Reaching a decision

65 In considering an appeal, the panel should decide, on the balance of probabilities, whether the pupil did what he or she is alleged to have done. If more than one incident of misconduct is alleged, the panel should decide in relation to each one.

66 The panel should consider the basis of the Headteacher's decision and the procedures followed having regard to the following:

- a) whether the Headteacher and governing body complied with the law and had regard to the Secretary of State's guidance on exclusion in deciding, respectively, to exclude the pupil and not to direct that he or she should be reinstated. While the law states that the panel must not decide to reinstate a pupil solely on the basis of technical defects in procedure prior to the appeal, procedural issues would be relevant if there were evidence that the process was so flawed that important factors were not considered or justice was clearly not done;
- b) the school's published behaviour policy, equal opportunities policy and, if appropriate, anti-bullying policy, Special Educational Needs policy, and race equality policy;
- c) the fairness of the exclusion in relation to the treatment of any other pupils involved in the same incident.

67 Having satisfied themselves as to these issues, the panel should consider whether in their opinion permanent exclusion was the right response. If they conclude it was not, they should then go on to consider whether this is an exceptional case where reinstatement is not a practical way forward.

68 In deciding on whether or not to direct reinstatement, the panel must balance the interests of the excluded pupil against the interests of all the other members of the school community.

69 Where a parent appeals against permanent exclusion and makes a claim alleging racial discrimination, the appeal panel must consider whether there has been discrimination in relation to the Race Relations Act 1976 (as amended).

70 Where a parent appeals against permanent exclusion and makes a claim alleging disability discrimination, the appeal panel must consider whether the pupil is disabled and whether there has been discrimination within the meaning of the Disability Discrimination Act 1995 (as amended). Appeal panels must consider the Disability Rights Commission's Schools Code of Practice which provides guidance on the Disability Discrimination Act.

The decision

71 An appeal panel may uphold the decision to exclude; direct immediate reinstatement or reinstatement at some future date; or they may decide that because of exceptional circumstances or other reasons it is not practical to give a direction requiring reinstatement, but that it would otherwise have been appropriate to give such a direction.

72 If the panel direct reinstatement the date specified must be reasonable in the

circumstances. The panel may not attach conditions to the reinstatement of a pupil.

73 In some cases, it will not be practical for the panel to direct reinstatement because the parent has made clear he or she does not want it, or because the child has become too old to return to the school.

74 There may also be exceptional cases where the panel consider that the permanent exclusion should not have taken place, but that reinstatement in the excluding school is not a practical way forward in the best interests of all concerned. This could include situations where there has been an irretrievable breakdown in relations between pupil and teachers; or between the pupil and other pupils involved in the exclusion or appeal process. Before deciding that there are exceptional circumstances the panel should try to establish what efforts have been made to address a possible breakdown in relations. Balancing the interests of the pupil and the whole school community may suggest that reinstatement would not be the most sensible outcome in such cases. In considering whether such exceptional circumstances exist the panel should consider representations from the governors, the Headteacher and from the parent (or pupil if 18 or over).

75 In any case where the panel decide that reinstatement would have been justified but is not practical, they should indicate this in their decision letter and give details of the circumstances that made them decide not to direct reinstatement. Such a letter should be added to the pupil's school record for future reference.

Record of the proceedings of an appeal panel

76 The clerk to an appeal panel should take minutes of the proceedings, the attendance, the voting and the decision. The minutes are not public documents but should be retained by Highgate Hill House School School for a period of at least five years, (seventy five years as per Archiving policy for Highgate Hill House School) as they may need to be seen by a court or by the Local Government Ombudsman.

After the hearing

77 The panel is independent. Its decision is binding on the parent and the Headteacher. The panel cannot revisit its decision once made.

78 The panel must let all parties know its decision by the end of the second working day after the hearing. The decision letter should give the panel's reasons for its decision in as much detail as possible for the parties to understand why the decision was made.

79 If the appeal panel upholds the permanent exclusion, the clerk should immediately report this to the LEA. If the pupil is of compulsory school age, it is for the LEA in whose area the pupil lives to make arrangements as quickly as possible for the pupil to continue in suitable full-time education. If the pupil lives outside the area of the LEA arranging the appeal, the clerk should make sure that the home LEA is also informed immediately of the position.

80 Where the exclusion is upheld the clerk should also advise the parent/carer to contact the appropriate person at the home LEA about arrangements for their child's continuing education. The Teacher in Charge should remove the pupil's name from the school roll the day after the conclusion of the appeal.

81 Where the panel direct reinstatement they should immediately inform the Headteacher of their decision and specify the date on which the pupil must be readmitted.

82 Details of exclusion may not be deleted from the pupil's record, even where reinstatement

is directed. Highgate Hill House School must, however, comply with any parental carer's request to append their appeal statement to the pupil's record. It will be for the LEA to decide what details of the exclusion are included in the pupil's school record: copies of the Headteacher correspondence might be included and possibly the minutes of the appeal panel hearings.

Remedies after the appeal hearing

Complaint to the Commissioner for Local Administration (the Local Government Ombudsman)

83 A parent can complain to the Local Government Ombudsman about maladministration by the appeal panel. The Ombudsman can make recommendations if he or she finds that there has been maladministration. He or she might recommend a fresh hearing, if this were practical, and the Trust would normally be expected to comply.

PART 5: POLICE INVOLVEMENT AND PARALLEL CRIMINAL PROCEEDINGS

Introduction

84 A school-related incident may sometimes also be the subject of a police investigation which may subsequently result in criminal proceedings. This can mean that the evidence available to the Headteacher, Chair of Governors and Appeals Panel is very limited. They may not, for example, be able to hear relevant witnesses or to consider relevant material; it may not be known whether a criminal charge is to be brought; if a charge has been brought, the eventual outcome of any court proceedings may be uncertain. It should be remembered that the police and the courts will be applying the criminal standard of proof – beyond reasonable doubt – whereas the Headteacher and Appeals Panel must apply the civil standard of proof (the balance of probabilities).

The Headteacher's decision to exclude and consideration of the circumstances by the Management Team

85 The Headteacher need not postpone his or her decision to exclude a pupil simply because of the possibility that criminal proceedings might be brought in respect of the same incident, but the critical factor in any such case will be the evidence that is available to them. In such circumstances, a judgment must be made on the basis of the evidence available. Relevant considerations include the fact that:

- a) a serious allegation has been made against the pupil by another pupil or member of staff at the school which is the subject of a police investigation which may result in criminal proceedings being brought;
- b) pending the conclusion of any such criminal proceedings, the pupil's continued presence in the school may have an adverse effect on the complainant and other potential witnesses, and on the promotion of good order and discipline at the school generally.

86 Where the Headteacher excludes a pupil in circumstances such as those outlined in the preceding paragraph, the school's management team has no power to postpone their meeting to consider the pupil's exclusion beyond the statutory time-limit. In deciding whether to direct the Headteacher to reinstate the pupil, therefore, they too may be subject to the same constraints as regards the availability of witnesses and other relevant information and will have to consider the case on the same basis.

Arrangements for appeal hearings in parallel criminal proceedings cases

87 Where the management team decide not to reinstate a permanently excluded pupil in the circumstances described in the preceding paragraph, the parent/social worker (or, if aged over 18, the pupil) should be notified of their decision and of their right to appeal. Any appeal must be lodged no later than 15 school days after the day on which notification of the management team's decision was received and the appeal panel must meet to consider the appeal no later than 15 school days after the day on which the appeal was lodged.

88 Upon first meeting, the appeal panel must consider, taking into consideration any representations made by the parties and on the advice of their clerk, whether they can proceed to determine the appeal or whether instead to adjourn the hearing pending the outcome of any police investigation and/or any criminal proceedings that may be brought. The mere fact that parallel criminal proceedings are in progress will not of itself determine whether the hearing should be adjourned. Relevant factors for the panel to consider will include:

- a) whether any charge has been brought against the pupil and, if so, what the charge is;
- b) whether relevant witnesses and documents are available;
- c) the likelihood of delay if the hearing were adjourned and the effect it may have on any complainant, the excluded pupil or the school itself;
- d) whether an adjournment or, as the case may be, declining to adjourn, might result in injustice.

89 If the panel do decide to adjourn, the LEA should take steps to ensure the pupil's continuing education pending the hearing. The clerk will be responsible for monitoring the progress of any police investigation and/or criminal proceedings and for re-convening the panel at the earliest opportunity when the hearing can proceed to final determination.

If necessary, the panel may adjourn more than once. The same panel members should re-convene on each occasion. Where the panel reconvene following the disposal of any criminal proceedings they should have regard to any information about them relevant to the issues they have to determine.

Appendix:

Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units: Related documents

Education Act 2002 section 52

The Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002 (S.I. 2002/3178) as amended by The Education (Pupil Exclusions) (Miscellaneous Amendments) (England) Regulations 2004 (SI 2004/....)

The Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002 (S.I. 2002/3179) as amended by The Education (Pupil Exclusions) (Miscellaneous Amendments) (England) Regulations 2004 (SI 2004/....)

Exclusion Appeal Panels Training Pack – Getting it Right – available from ISCG tel no 020 7229 0200 email: iscg@governors.fsnet.co.uk or on line -

http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion/appealtrainingpack_

Legal Toolkit for Schools – available from DfES Publications tel no 0845 602 2260 or at www.teachernet.gov.uk/safeschools

Disability Discrimination Act 1995 as amended by The Special Educational Needs and Disability Act 2001

Race Relations Act 1976 as amended by The Race Relations (Amendment) Act 2000

The Race Relations (Statutory Duties) Order 2001 (S.I. 2001/3458)

The Education (Pupil Registration) Regulations 1995 (S.I. 1995/2089) as amended

Guidance on the Education-related provisions of the Anti-social Behaviour Act – available from Prolog tel no 0845 602 2260 or at <http://www.dfes.gov.uk/behaviourandattendance/>

The Education (Parenting Orders) (England) Regulations 2004 (SI 2004/)

Guidance on Drugs in Schools (at <http://www.teachernet.gov.uk/wholeschool/behaviour/drugs/>)

The education of children and young people in public care <http://www.dfes.gov.uk/incare/>

Department for Education and Skills, Circular 7/90 'Management of the School Day'.

National Curriculum Handbooks (References: QCA/99/457, QCA/99/458)

Admissions Code of Practice (Reference: DfES/0031/2003)

Special Educational Needs Code of Practice (Reference: DfES/581/2001)

Admission Appeals Code of Practice