

**EMLC  
Academy  
Trust**

**Exclusions  
Policy  
2015/17**

**'Every child deserves to be the best they can be'**

<b>Scope: EMLC Academy Trust &amp; Academies within the Trust</b>	
<b>Version:</b> V1 – 7/12/15	<b>Filename:</b> EMLC Academy Trust Exclusions Policy
<b>Approval:</b> This policy was ratified by the EMLC Academy Trust on: 17 <sup>th</sup> December 2015	<b>Next Review:</b> 16 <sup>th</sup> December 2017 <i>This policy will be reviewed every 2 years by the Strategic Board.</i>
<b>Owner:</b> EMLC Academy Trust Strategic Board	<b>Union Status:</b> Not applicable

<b>Policy type:</b>	
Non-statutory	Replaces Academy's current policy

### **Guidance:**

Exclusion from maintained schools, Academies and pupil referral units in England (DfE, 2012) Available at <https://www.gov.uk/government/publications/school-exclusion>

Alternative provision (DfE, 2013) Available at <https://www.gov.uk/government/publications/alternative-provision>

The Equality Act 2010 and schools (DfE, 2014) Available at <https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools>

## **EXCLUSIONS POLICY**

### **1. Introduction**

All children have a right to an education. Good discipline in our academies is essential to ensure that all pupils can benefit from the opportunities provided by education. Occasionally, for serious incidents of poor behaviour, such as verbal or physical abuse to another member of the academy community the principal may resort to excluding pupils. Formal exclusion is the only legal means by which a pupil may be removed from the academy site for a breach of the Behaviour Policy. Permanent exclusion should only be used as a last resort, in response to a serious breach, or persistent breaches, of the academy's Behaviour Policy and where allowing the pupil to remain in the academy would seriously harm the education or welfare of the pupil or others in the academy.

The law also allows the academy to send a pupil home to change his/her clothes to comply with uniform rules without an exclusion as long as parents are notified in advance. The time allowed will be no longer than is necessary for clothes to be changed and the absence from the academy recorded as authorised. However, if the pupil continues to breach uniform rules to avoid school, the pupil's absence may be recorded as unauthorised.

### **2. Purpose**

This policy is designed to outline EMLC Academy Trust's approach to exclusions within the statutory framework (Appendix I).

### **3. Definitions**

'Principal' in this document and in DfE guidance applies equally to an executive principal, acting principal or head of school.

'Governing body' in this document and in DfE guidance should be read to mean the board of directors or the directors of the Academy Trust Company. In our academies, delegated authority is given to the Local Governing Body/Academy Improvement Board, who are responsible for informing and updating the Strategic Board.

'Term' in this document and in DfE guidance refers to a 3 term year. Although in our academies we follow a 6 term academic year, for the purposes of this policy a 'term' means the period falling between: 31<sup>st</sup> December to Easter Monday; Easter Monday to 31<sup>st</sup> July; 31<sup>st</sup> July to 31<sup>st</sup> December.

'Parent' in this document and in DfE guidance refers to the pupil's birth parents, any person who has parental responsibility and any person (for example, a foster carer) with whom the pupil lives. Obligations relating to exclusions are to the 'relevant person' – a parent or the pupil where they are aged 18 or over.

#### **4. Key Principles**

Only a principal can exclude a pupil and this must be on disciplinary grounds.

Any decision to exclude must be lawful (with respect to the legislation relating directly to exclusions and an academy's wider legal duties), rational, reasonable, fair and proportionate.

In every instance where a pupil is sent home for disciplinary reasons, principals must formally record and specify the length of the exclusion.

All exclusions must be reported to EMLC Academy Trust on the day of occurrence.

#### **5. Unlawful exclusions**

'Informal' or 'unofficial' exclusions, such as sending pupils home 'to cool off' are unlawful, regardless of whether they occur with the agreement of parents or carers.

If a pupil is sent home in response to a breach of discipline, even for a short period of time, this must be formally recorded as an exclusion.

It is unlawful to exclude or to increase the severity of an exclusion for a non-disciplinary reason e.g.:

- because the pupil has additional needs or disability that the academy feels unable to meet;
- academic attainment/ability;
- the action of a pupil's parents;
- time needed to arrange a multi-agency, review or planning meeting;
- failure of a pupil/parent to meet specific conditions before the pupil is reinstated.

#### **6. Behaviour outside of the academy**

The behaviour of pupils outside of the academy can be considered as grounds for exclusion. The academy's Behaviour Policy should set out what the academy will do in response to all non-criminal bad behaviour and bullying which occurs anywhere off the academy premises. The principal could exclude a pupil for any misbehaviour while the pupil is:

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

academy.

Exclusion could also be used for misbehaviour at any time that:

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

## **7. Preventative Measures**

### **a. Early Interventions and Strategies**

Academy-based interventions and strategies should be implemented at the earliest opportunity when a pupil is identified as being at risk of permanent exclusion. The interventions and strategies should be co-ordinated and targeted to meet individual pupil needs, with a view to maintaining the pupil in school and avoiding exclusion. They are not intended as an administrative step on the route to permanent exclusion.

### **b. SEND Reviews**

Principals and governing bodies must take account of their statutory duties, including the SEND Code of Practice, when administering the exclusion process. They should, as far as possible avoid excluding permanently any pupil with a statement of SEND. Where an academy identifies a pupil with a statement of special educational needs (or Education, Health and Care Plan - EHCP) who is at serious risk of disaffection or exclusion, an interim or early review should be called. It will then be possible to consider the pupil's changing needs and recommend amendments to the statement, as an alternative to the pupil being excluded.

### **c. Managed Moves**

A Managed Move is defined as a formal agreement between two schools/academies, a pupil and their parents. It allows a pupil at risk of permanent exclusion to transfer to another school/academy. The move requires the agreement of the child's parent, the principal of the pupil's academy, the head teacher/principal of the proposed school/academy, and, where appropriate, the Local Authority (LA). A Managed Move is never an early or first response when a pupil is failing at an academy because of behaviour; rather it should be considered as part of a measured response to supporting their emotional social and behavioural needs. It is likely to be a strategy considered in the later stages of a academy based interventions and strategies where there is little or no evidence of success.

### **d. Holistic Assessment**

Disruptive behaviour can be an indication of unmet needs. Where an academy has concerns about a pupil's behaviour it should try to identify whether there are any causal factors and

intervene early in order to reduce the need for a subsequent exclusion. In this situation, academies should give consideration to a multi-agency assessment that goes beyond the pupil's educational needs.

Early intervention to address underlying causes of disruptive behaviour should include an assessment of whether appropriate provision is in place to support any SEND that a pupil may have.

Principals should consider what extra support might be needed to identify and address the needs of pupils from key vulnerable groups in order to reduce their risk of exclusion (pupils eligible for Free School Meals; Looked After Children; pupils from certain ethnic groups - Gypsy/Roma; Travellers of Irish Heritage; Black Caribbean communities).

Principals should, as far as possible, avoid excluding permanently any pupil with a statement of SEN or a looked after child.

#### **e. Looked After Children**

Academies should co-operate proactively with foster carers or children's home workers and the local authority that looks after the pupil. Where an academy has concerns about the behaviour, or risk of exclusion, of a looked after child it should, in partnership with others (including the local authority as necessary), consider what additional support or alternative placement may be required.

#### **f. Referral to Specific Support Service**

e.g.:

- Targeted Support Teams;
- Youth Support Services;
- Children and Young People's Service (CYPS);
- Alternative Provision School or other Alternative Provider;
- Voluntary Sector Support Services.

#### **g. Alternative Provision**

With parents' agreement, academies can place a pupil either full-time or part-time in another educational setting to improve a pupil's behaviour.

### **8. Exclusion**

#### **a. Policies**

Academies must apply their Behaviour Policy in a consistent, rigorous and non-

discriminatory way with due regard to the Equality Act 2010. This Act has provision that allows academies to take positive action to deal with particular disadvantages affecting one group, where this can be shown to be a proportionate way of dealing with such issues.

Exclusions should not be used for:

- failure to do homework;
- poor academic performance;
- lateness or truancy;
- one-off breaches of academy uniform or rules on appearance;
- behaviour of pupils' parents.

#### **b. Mitigating Circumstances**

Principals should take account of any contributing factors that are identified after an incident of poor behaviour has occurred.

Examples of possible **mitigating** factors are:

- Provocation e.g. as a result of persistent bullying or racial abuse;
- The pupil's general medical and emotional condition;
- New to the academy (possible unawareness of the Behaviour Policy);
- Coercion or being encouraged by others;
- A relatively minor role in the incident compared to others;
- An impulsive act or one committed in the heat of the moment;
- A first offence;
- Previous behaviour and character of the pupil suggesting that repetition is unlikely;
- An apology for the behaviour;
- Showing repentance and willingness to assume responsibility;
- Voluntary co-operation with the investigation;
- Admission of the offence;
- Readiness to make restitution towards the victim(s).

### **c. Safeguarding Children**

Principals must take account of their legal duty of care when sending a pupil home following the exclusion. The principal should also give particular consideration to the fair treatment of pupils from groups who are vulnerable to exclusion. Principals should ensure that:

- they are meeting their legal duty of care towards pupils. Parents must be formally notified of the exclusion and the pupil must not be placed at risk by, for example, being sent home without adequate supervision;
- child protection issues are taken into account e.g. bearing in mind the pupil's age and vulnerability. Principals should consider whether any pupil may be at risk of Child Sexual Exploitation (CSE) and the implications of this on the decision to exclude. Exclusion from the academy or unexplained absences from the academy is a risk indicator on the CSE screening tool. Reference should be made to the appropriate LA's Child Sexual Exploitation (CSE) toolkit.

Working with the principal, the Designated Safeguarding Lead (DSL) is responsible for maintaining a confidential record of all pupils for whom there are Child Protection (CP) issues or who have a Child Protection Plan (CPP) and for managing the education contribution to the CPP.

A pupil for whom there are CP issues or a CPP is more at risk of harm if their family is placed under unexpected stress. Any exclusion can create stress and each academy should have systems that allow current information about a pupil's situation to be considered when the principal is considering exclusion.

The DSL can advise the principal and contact children's social care before the principal takes action to exclude. In discussion with the principal or DSL, the social worker may decide to call a core group meeting for pupils with CPPs to plan how to ensure the pupil is kept safe from significant harm. The principal will normally consult a pupil's social worker before making the decision to exclude. In some cases it may be appropriate for the principal to delay the dates for exclusion e.g. 2-3 days to allow the social worker to plan how to ensure the pupil is kept safe from significant harm during the exclusion. The principal may issue an internal exclusion for the intervening days in the academy.

If a parent does not comply with the exclusion, by sending the excluded pupil to the academy, or by refusing to collect, or arrange collection of the pupil, the academy must consider the pupil's safety in deciding what action to take. Any exclusion should not be enforced if doing so may put the safety of the pupil at risk. The social worker may help to resolve the issue with the parents of any pupil with a CPP.

For any child with a CPP who has a My Plan, a My Plan+ or a statement or EHCP and is at risk of exclusion, the academy should invite the social worker to a review of the plan. It may be appropriate to review the plan as part of a broader multi agency review of the pupil's

needs or to complete the review before a planned core group meeting. The DSL will be able to share the outcomes of the review at any future meeting regarding the CPP.

## **9. Gathering Evidence**

When establishing the facts in relation to an exclusion the principal must apply the civil standard of proof i.e. 'on the balance of probabilities' it is more likely than not that a fact is true.

Evidence could consist of witness statements, photographs, screen shots from social network sites, physical evidence or behaviour incident records. In the case of exclusions for persistent disruptive behaviour, principals should also provide evidence that preventative measures have been used (Appendix A - Support Summary and Impact Form).

Principals should give pupils the opportunity to present their views before taking the decision to exclude (Appendix B Pupil at Risk of Permanent Exclusion).

### **a. Witness Statements**

All witness statements should be attributed, signed and dated, unless the academy has good reason to wish to protect the anonymity of the witness, in which case the statement should at least be dated and labelled in a way that allows it to be distinguished from other statements (Appendix C Witness Statement).

The following advice is taken from Witness Statements Preparation Guide, European Human Rights Advocacy Centre, 2008:

If an adult is writing down the statement of a young person, or asking a pupil to write their own statement, they must avoid using leading questions. Useful questions might include:

- When did the incident take place?
- Where was the witness at the time and what was he or she doing?
- Who was the witness with and what did the witness see?
- What did each person say or do?

Statements should be factual and in the words of the witness: 'I did this...', and 'I saw...'

Statements could also include photos, maps, sketches or diagrams.

When the decision is made to 'anonymise' witness statements by pupils, the academy should contact the pupil's parents of the witness to explain that the 'anonymised' statement will be presented to the governors' disciplinary panel. Governors can read the original statements and decide whether to lift the 'veil of anonymity' to ensure fairness. In this case all parties at

the meeting will see the names of the witnesses. Parents of the witness will need to agree to this in advance of the meeting otherwise the evidence may be discounted.

### **10. Police Involvement and Parallel Criminal Proceedings**

- Principals need not postpone taking a decision about an exclusion solely because a police investigation is underway and/or any criminal proceedings may be brought. In such circumstances, principals will need to take a decision on the evidence available to them at the time, ensuring this decision is fair. It may be advisable, where the evidence is not clear-cut or is still coming to light, to first exclude the pupil for a fixed period.
- Where the governing body is required to consider a principal's decision in these circumstances they cannot postpone their meeting and must decide whether or not to reinstate the pupil on the evidence available.
- The fact that parallel criminal proceedings are in progress should also not directly determine whether an independent review panel should be adjourned. Relevant factors for the panel to consider will include:
  - whether any charge has been brought against the pupil and, if so, what the charge is;
  - whether relevant witnesses and documents are available;
  - the likelihood of delay if the hearing were adjourned and the effect it may have on the excluded pupil, the parents, any victim or the academy; and
  - whether an adjournment or declining to adjourn, might result in injustice.
- Where a panel decides to adjourn, the clerk (or EMLC Academy Trust where a clerk is not appointed) will be responsible for monitoring the progress of any police investigation and/or criminal proceedings, as well as for reconvening the panel at the earliest opportunity. If necessary the panel may adjourn more than once.

### **11. Fixed Period Exclusion**

A pupil may be excluded for one or more fixed periods (up to a maximum of 45 school days in a single academic year). A fixed period exclusion does not have to be for a continuous period. In exceptional cases, usually where further evidence has come to light, a fixed period exclusion may be extended or converted to a permanent exclusion.

Fixed period exclusions should be for the shortest time necessary. Ofsted inspection evidence suggests 1-3 days are often long enough. A longer period of exclusion may have adverse educational consequences.

A lunch-time exclusion should be recorded as a half day.

Academies should take reasonable steps to set and mark work for pupils during the first five days of an exclusion. Work that is provided should be accessible and achievable by pupils outside of the academy.

## **12. Permanent Exclusion**

A decision to exclude a pupil permanently should only be taken:

- in response to serious or persistent breaches of the academy's Behaviour Policy; and
- where allowing the pupil to remain in the academy would seriously harm the education or welfare of the pupil or others in the academy.

Where practical, principals should give a pupil a final opportunity to present their case before taking the decision to exclude (Appendix B Pupil at Risk of Permanent Exclusion).

While current government guidance provides no examples of what a serious breach of the academy's Behaviour Policy might be, principals might reasonably consider permanent exclusion in the following, as cited in previous government guidance (2008):

- serious actual or threatened violence against another pupil or member of staff;
- sexual abuse or assault;
- supplying an illegal drug;
- carrying an offensive weapon.

## **13. Procedures Following an Exclusion**

### **a. Informing Parents (Appendix D – Model Letters)**

Whenever a principal excludes a pupil they must, without delay, notify parents of the period of the exclusion and the reasons for it.

They must also, without delay, provide parents with the following information in writing:

- the reasons for the exclusion;
- the period of a fixed period exclusion or, for a permanent exclusion, the fact that it is permanent;
- parents' right to make representations about the exclusion to the governing body and how the pupil may be involved in this;
- how any representations should be made and the person whom the parent should contact if they wish to make such representations (this will usually be the Clerk to the Governing Body);

- where there is a legal requirement for the governing body to consider the exclusion, that parents have a right to attend a meeting, be represented at this meeting (at their own expense) and to bring a friend;
- that for the first five academy 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 academy hours without reasonable justification, and that parents may be given a fixed penalty notice or prosecuted if they fail to do so;
- the arrangements made by the academy for enabling the pupil to continue his or her education during the first five academy days of an exclusion, including the setting and marking of work. It is the parent's responsibility to ensure that work sent home is completed and returned to the academy;
- the academy days on which the pupil will be provided with alternative suitable full-time educational provision and will be required to attend this provision. Separate notification of these details\* can be sent later if more time is needed by the academy to make arrangements, but must be given in writing at least 48 hours before the education is to be provided;
- where parents can obtain relevant sources of free and impartial information, including, where considered relevant by the principal, links to local services, such as Traveller Education Services or the local parent partnership ([www.parentpartnership.org.uk](http://www.parentpartnership.org.uk)).

Parents must be informed where a fixed period exclusion has been extended or converted to a permanent exclusion. In such cases the principal must write again to the parents explaining the reasons for the change and providing any additional information required.

**NB** Letters may need to be translated into other languages, where parent's first language is not English.

- \* If alternative provision is being arranged then the following information must be provided:
- the start date for any provision of full-time education that has been arranged for the pupil during the exclusion;
  - 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; and
  - any information required by the pupil to identify the person he/she should report to on the first day.

*Statutory guidance on the education of pupils prior to the sixth day of an exclusion:*

It is important for academies to help minimise the disruption that exclusion can cause to an excluded pupil's education. Whilst the statutory duty on governing bodies is to provide full-time education from the sixth day of an exclusion, there is an obvious benefit in starting this provision as soon as possible. In particular, in the case of a looked after child, academies and, where appropriate, local authorities, should work together to arrange alternative provision from the first day following the exclusion. Where it is not possible, or appropriate, to arrange alternative provision during the first five academy days of an exclusion, academies should take reasonable steps to set and mark work for pupils. Work that is provided should be accessible and achievable by pupils outside of the academy.

### **b. Informing the Governing Body and the Local Authority (Appendix E – Exclusion Reporting Form)**

The principal must, without delay, and certainly within one day, notify the governing body and local authority of:

- a permanent exclusion (including where a fixed period exclusion is made permanent);
- exclusions which would result in the pupil being excluded for more than five academy days (or more than ten lunchtimes) in a term; and
- exclusions which would result in the pupil missing a public examination or national curriculum test.

For all other exclusions, the principal must notify the local authority and governing body once a term.

Notifications must include the reasons for the exclusion and the duration of any fixed period exclusion.

For a permanent exclusion, if the pupil lives outside the local authority in which the academy is located, the principal must also advise the pupil's 'home authority' of the exclusion without delay.

### **14. The Governing Body's and Local Authority's Duties to Arrange Education for Excluded Pupils**

For a fixed period exclusion of more than five academy days, the governing body must arrange suitable full-time education for any pupil of compulsory school age. This provision must begin no later than the sixth day of the exclusion.

For permanent exclusions, the local authority must arrange suitable full-time education for the pupil to begin no later than the sixth day of the exclusion. This will be the pupil's 'home authority' in cases where the academy is maintained by (or located within) a different local authority.

In addition, where a pupil has a statement of SEN, the local authority must ensure that an appropriate full-time placement is identified in consultation with the parents, who retain their rights to express a preference for a school/academy that they wish their child to attend, or make representations for a placement in any other school/academy.

Provision does not have to be arranged by either the academy or local authority for pupils in the final year of compulsory education who do not have any further public examinations to sit.

### **15. The Requirements on a Governing Body to Consider an Exclusion**

The governing body has a duty to consider parents' representations about an exclusion. The requirements on a governing body to consider an exclusion depend upon a number of factors (Appendix F - A summary of the governing body's duties to review the principal's exclusion decision). The governing body may delegate their functions with respect to the consideration of an exclusion decision to a designated sub-committee consisting of at least three governors.

The governing body must consider the reinstatement of an excluded pupil within 15 academy days of receiving notice of the exclusion if:

- the exclusion is permanent;
- it is a fixed period exclusion which would bring the pupil's total number of academy days of exclusion to more than 15 in a term; or
- it would result in a pupil missing a public examination or national curriculum test.

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

#### **a. Public Examinations or National Curriculum Tests**

Where an exclusion would result in a pupil missing a public examination or national curriculum test there is a further requirement for a governing body, so far as is reasonably practicable, to consider the exclusion before the date of the examination or test. If this is not practicable, the chair of governors may consider the exclusion independently and decide whether or not to reinstate the pupil (or the vice chair if the chair is unable to make this consideration). These are the only circumstances in which the chair can review an exclusion decision alone. In such cases parents still have the right to make representations to the governing body and must be made aware of this right. Whilst there is no automatic right for an excluded pupil to take an examination or test on the excluding school's premises, the governing body should consider whether it would be appropriate to exercise their discretion to allow an excluded pupil on the premises for the sole purpose of taking the examination or

test.

### **b. Arranging and Conducting a Meeting**

Parents and the principal must be invited to a meeting of the governing body and allowed to make representations. A parent may also invite a representative of the local authority to attend a meeting of an academy's governing body as an observer; that representative may only make representations with the governing body's consent.

The governing body must make reasonable endeavours to arrange the meeting for a date and time that is convenient to all parties, but in compliance with the relevant statutory time limits set out above. However, its decision will not be invalid simply on the grounds that it was not made within these time limits.

In the case of a fixed period exclusion which does not bring the pupil's total number of days of exclusion to more than five in a term, the governing body must consider any representations made by parents, but it cannot direct reinstatement and is not required to arrange a meeting with parents.

The governing body should ensure that clear minutes are taken of the meeting as a record of the evidence that was considered by governing body. These minutes should be made available to all parties on request.

The governing body should ask all parties to withdraw before making a decision. Where present, a clerk may stay to help the governing body by reference to his/her notes of the meeting and with the wording of the decision letter.

In reaching a decision on whether or not to reinstate a pupil, the governing body should consider whether the decision to exclude the pupil was lawful, reasonable and procedurally fair, taking account of the principal's legal duties.

### **c. Statutory Guidance to Governing Bodies in Preparing for the Consideration of an Exclusion Decision**

Where the governing body is legally required to consider the decision of a principal to exclude a pupil they should:

- not discuss the exclusion with any party outside of the meeting;
- ask for any written evidence in advance of the meeting (including witness statements and other relevant information held by the academy, such as those relating to a pupil's SEN);
- where possible, circulate any written evidence and information, including a list of those who will be present, to all parties at least five academy days in advance of the meeting;

- allow parents and pupils to be accompanied by a friend or representative (where a pupil under 18 is to be invited as a witness, the governing body should first seek parental consent and invite the parents to accompany their child to the meeting);
- have regard to their duty to make reasonable adjustments for people who use the academy and consider what reasonable adjustments should be made to support the attendance and contribution of parties at the meeting (for example where a parent or pupil has a disability in relation to mobility or communication that impacts upon their ability to attend the meeting or to make representations); and
- identify the steps they will take to enable and encourage the excluded pupil to attend the meeting and speak on his/her own behalf (such as providing accessible information or allowing them to bring a friend), taking into account the pupil's age and understanding, or how the excluded pupil may feed in his/her views by other means if attending the exclusion meeting is not possible.

#### **d. The Requirements on a Governing Body When Considering the Reinstatement of an Excluded Pupil**

Where the governing body is legally required to consider an exclusion they must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and people working at the academy.

The governing body must also consider any representations made by parents and the principal. Where parents have invited a representative of the local authority to attend a meeting of an academy's governing body as an observer, that representative may only make representations with the governing body's consent.

When establishing the facts in relation to an exclusion decision the governing body must apply the civil standard of proof; i.e. 'on the balance of probabilities' it is more likely than not that a fact is true, rather than the criminal standard of 'beyond reasonable doubt'. In the light of their consideration, the governing body can either:

- uphold an exclusion; or
- direct reinstatement of the pupil immediately or on a particular date.

Where reinstatement is not practical because for example, the pupil has already returned to the academy following the expiry of a fixed period exclusion or the parents make clear they do not want their child reinstated, the governing body must, in any event, consider whether the principal's decision to exclude the child was justified based on the evidence.

## **16. The Governing Body's Duty to Notify People Following Consideration of an Exclusion (Appendix G – Notification of Decision Following Consideration of a Fixed Term Exclusion/Appendix H - Notification of Decision Following Consideration of a Permanent Exclusion)**

Where legally required to consider an exclusion, the governing body must notify parents, the principal and the local authority of their decision, and the reasons for their decision, in writing and without delay. Where the pupil resides in a different local authority from the one that maintains the academy, the governing body must also inform the pupil's 'home authority'.

The governing body should note the outcome of their consideration on the pupil's educational record, along with copies of relevant papers for future reference.

In cases where the governing body considers parents' representations but does not have the power to direct a pupil's reinstatement, they should consider whether it would be appropriate to place a note of their findings on the pupil's educational record.

Claims of discrimination to the First-tier Tribunal or County Court can be made up to six months after the discrimination is alleged to have occurred. Where practicable, academies should retain records and evidence relating to an exclusion for at least six months in case such a claim is made.

## **17. Removing a Permanently Excluded Pupil's Name from the Academy Register**

The principal must remove a pupil's name from the academy admissions register if:

- 15 academy days have passed since the parents were notified of the governing body's decision to uphold a permanent exclusion 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 panel has been made within 15 academy days, the principal must wait until the review has been determined, or abandoned, before removing a pupil's name from the register. Where a pupil's name is removed from the academy register and a discrimination claim is subsequently made, the First-tier Tribunal or County Court has the power to direct that the pupil should be reinstated.

### **a. Marking the Attendance Register**

Whilst an excluded pupil's name remains on an academy's admissions register the pupil should be marked using the appropriate attendance code. Where alternative provision has been made that meets the requirements of the pupil registration regulations, and the pupil

attends it, an appropriate attendance code, such as Code B (Education Off-site) or Code D (Dual Registration), should be used. Where pupils are not attending alternative provision they should be marked absent using Code E.

## **18. The Academy Trust's Duty to Arrange an Independent Review Panel**

If applied for by parents within the legal time frame, the Academy Trust must, at their own expense, arrange for an independent review panel hearing to review the decision of a governing body not to reinstate a permanently excluded pupil.

Parents may request an independent review panel even if they did not make a case to, or attend, the meeting at which the governing body considered the exclusion.

### **a. Time Frames**

The legal time frame for an application is:

- within 15 academy days of notice being given to the parents by the governing body of their decision to uphold a permanent exclusion; or
- where an application has not been made within this time frame, within 15 academy days of the final determination of a claim of discrimination under the Equality Act 2010 in relation to the exclusion.

Any application made outside of the legal time frame must be rejected by the Academy Trust.

### **b. Meeting Arrangements**

EMLC Academy Trust must take reasonable steps to identify a date for the review that all parties are able to attend. However, the review must begin within 15 academy days of the day on which the Trust received the parent's application for a review (panels have the power to adjourn a hearing if required). The Trust must not delay or postpone arranging an independent review panel where parents also make a claim of discrimination in relation to the exclusion to the First-tier Tribunal (Special Educational Needs and Disability) or the County Court.

The Trust must arrange a venue for hearing the review, which must be in private unless the panel directs otherwise. The venue for the review must be appropriate, accessible to all parties, and have a suitable area for the parties to wait separately from the panel before the review.

Where the issues raised by two or more applications for review are the same, or connected, the panel may combine the reviews if, after consultation with all parties, there are no objections. However, where the issues raised by two or more applications for review are the same, or connected, but the panel does not combine the reviews, the Trust should take reasonable steps to ensure fairness and consistency. Where possible, the same panel

members should hear all related reviews.

### **c. Appointing Panel Members**

The panel must be constituted with either 3 or 5 panel members, representing each of the 3 categories below:

- A lay member to chair the panel who has not worked in any school/academy 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 five years, provided they have not been teachers or head teachers during this time;
- Head teachers or individuals who have been a head teacher within the last five years.

A five member panel must be constituted with two members from each of the categories of school governors and head teachers.

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

- are a member/director of EMLC Academy Trust or governing body of the excluding academy;
- are the principal of the excluding academy or anyone who has held this position in the last five years;
- are an employee of EMLC Academy Trust, or the governing body, of the excluding academy (unless they are employed as a head teacher/principal at another school/academy);
- have, or at any time have had, any connection with EMLC Academy Trust, academy, parents or pupil, or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their impartiality (though an individual must not be taken to have such a connection simply because they are a head teacher/principal at another school/academy); or
- have not had the required training within the last two years (see 18d below).

EMLC Academy Trust must make arrangements to indemnify panel members against any legal costs and expenses reasonably incurred as a result of any decisions or actions connected to the review which are taken in good faith.

Prospective panel members must declare any conflict of interest at the earliest opportunity. Where possible, panel members who are governors or head teachers/principals should reflect the phase of education (primary/secondary) and type of school/academy from which

the pupil was excluded. Consideration should be given to appointing a chair with a legal qualification or other legal experience; this is particularly important where a clerk will not be providing legal expertise to the panel.

A review cannot continue if the panel no longer has representation from each of the three categories of members required; in this event, the panel must be adjourned until the number can be restored.

Once a review has begun, no panel member may be substituted by a new member for any reason. Accordingly, if the required representation cannot be restored from the original members, a new panel must be constituted to conduct the review afresh. In the case of a five-member panel, the panel may continue in the absence of any of its members, provided all three categories of member are still represented.

#### **d. Ensuring that Panel Members and Clerks are Trained**

EMLC Academy Trust must ensure that all panel members and clerks have received training within the two years prior to the date of the review. This 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 of a review panel;
- the role of the clerk to a review panel;
- the duties of head teachers/principals, governing bodies and the panel under the Equality Act 2010; and
- 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.

#### **19.Appointing a Clerk**

EMLC Academy Trust may appoint a clerk to provide advice to the panel and parties to the review on procedure, legislation and statutory guidance on exclusions. The clerk should not have served as clerk to the governing body meeting. Where a clerk is not appointed, the functions become the responsibility of EMLC Academy Trust and the Trust should consider what additional steps it may need to take to ensure that the independent review panel is administered properly.

In addition to the training required by law, clerks should have an up-to-date understanding of developments in case law, legislation and guidance which are relevant to exclusion.

### **a. The Clerk's Role and Preparing for the Review**

Where appointed the clerk must perform the following additional functions:

- Make reasonable efforts to inform the following people that they are entitled to: make written representations to the panel; attend and make oral representations to the panel; be represented; and (in the case of a parent), to bring a friend:
  - the parents;
  - the principal (where an excluding principal has left the academy, the panel may use its discretion in deciding whether also to invite this person to make representations);
  - the governing body.
- Make reasonable efforts to circulate to all parties, including to panel members and the SEN expert, copies of relevant papers 5 academy days in advance of the review. These papers must include:
  - the governing body's decision;
  - the parents' application for a review; and
  - any policies or documents that the governing body was required to have regard to in making their decision.
- Give all parties details of those attending and their role, once the position is clear.
- Attend the review and ensure that minutes are produced in accordance with instructions from the panel.
- The clerk should identify in advance of the meeting whether the pupil will be attending. Where an excluded pupil is attending the hearing, consideration should be given in advance as to the steps that will be taken to support his/her participation. If the excluded pupil is not attending it should be made clear that he/she may feed in their views through a representative or by submitting a written statement.
- In order to review the governing body's decision the panel will generally need to hear from those involved in the incident, or incidents, leading to the exclusion. The clerk should also try to ascertain whether an alleged victim, if there is one, wishes to be given a voice at the review. This could be in person, through a representative or by submitting a written statement.
- In the case of witnesses who are pupils of the academy 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 parents' consent. In such cases,

that pupil's parents should be invited to attend the meeting in support of their child.

- Where character witnesses are proposed the clerk should seek the agreement of the panel, but this should be allowed unless there is good reason to refuse.
- All written witness statements should be attributed, signed and dated, unless the academy has good reason to wish to protect the anonymity of the witness, in which case the statement should at least be dated and labelled in a way that allows it to be distinguished from other statements. The general principle remains that excluded pupils are entitled to know the substance behind the reason for their exclusion.
- Parties attending the hearing have the right to be represented. Representatives may make written or oral representations to the panel. If any of the parties wish 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 review. However, all parents may attend, if they wish to do so, and each can make representations and be represented.
- In addition to written witness statements, the clerk should request written evidence from the academy in order to circulate it in advance of the meeting, such as policies and documents of the school which the governing body would reasonably have been expected to take account of in reaching their decision on the exclusion.
- Where the academy'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 should be used.
- The clerk should notify the panel where requested documents have not been provided so that the panel can take a decision on whether to adjourn the hearing.

## **20.Appointing an SEN Expert**

If requested by parents in their application for an independent review panel, EMLC Academy Trust must appoint a SEN expert to attend the panel and cover the associated costs of this appointment. The Trust must make arrangements to indemnify the SEN expert against any legal costs and expenses reasonably incurred as a result of any decisions or actions connected to the review and which are taken in good faith.

Parents have a right to request the attendance of a SEN expert at a review, regardless of whether the academy recognises that their child has SEN.

Individuals may not serve as an SEN expert if they have, or at any time have had, any connection with the Trust, school, parents or pupil, or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their ability to act impartially. However, an individual is not taken to have such a connection solely because he/she is an

employee of the Trust.

The SEN expert should be a professional with first-hand experience of the assessment and support of SEN, as well as an understanding of the legal requirements on schools/academies in relation to SEN and disability. Recently retired individuals are not precluded from fulfilling this role, providing the individual had a good understanding of current practice and the legal requirements on schools/academies in relation to SEN.

Whilst individuals are not automatically taken to be partial simply because they are an employee of, or contracted by, the Trust, they should not have had any previous involvement in the assessment or support of SEN for the excluded pupil, or siblings of the excluded pupil. The Trust should request that prospective SEN experts declare any conflict of interest at the earliest opportunity.

The final decision on the appointment of an SEN expert is for the Trust to make but it should take reasonable steps to ensure that parents have confidence in the impartiality and capability of the SEN expert. Where possible, this may include offering parents a choice of SEN expert. In order to meet its duties within the statutory time frame, the Trust should consider maintaining a list of individuals capable of performing the role of SEN expert in advance of a request.

It is for the Trust to determine the amount of any payment in relation to the appointment of the SEN expert, such as financial loss, travel and subsistence allowances.

## **21. The Duties of Independent Review Panel Members, the Clerk and the SEN Expert in the Conduct of an Independent Review Panel**

- Panel members and, if appointed, the SEN expert must declare any known conflict of interest before the start of the review.
- The role of the panel is to review the governing body's decision not to reinstate a permanently excluded pupil. In reviewing the decision the panel must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and people working at the academy.
- The panel must apply the civil standard of proof, (i.e. 'on the balance of probabilities' it is more likely than not that a fact is true) rather than the criminal standard of 'beyond reasonable doubt'.
- Following its review the panel can decide to:
  - uphold the exclusion decision;
  - recommend that the governing body reconsiders their decision, or
  - quash the decision and direct that the governing body considers the exclusion

again.

- The panel's decision does not have to be unanimous and can be decided by a majority vote. In the case of a tied decision the chair has the casting vote.
- The independent review panel's decision is binding on the: pupil; parents; governing body; principal; local authority; Trust.
- New evidence may be presented to the panel, though the academy may not introduce new reasons for the exclusion and panels must disregard any new reasons that are introduced.
- The panel may only quash the decision where it considers that it was flawed when considered in the light of the principles applicable on an application for judicial review. In deciding whether the governing body's decision was flawed, and therefore whether to quash the decision, the panel must only take account of the evidence that was available to the governing body at the time of making their decision. This includes any evidence which the panel considers would, or should, have been available to the governing body if they had been acting reasonably.
- If evidence is presented that the panel considers is unreasonable to have expected the governing body to have been aware of at the time of their decision, the panel can take account of the evidence when deciding whether to recommend that the governing body reconsider their decision.
- Where present, the panel must seek and have regard to the SEN expert's view of how SEN might be relevant to the pupil's exclusion. Where a SEN expert has been requested but is not present, the panel should make parents aware of their right to request that the review is adjourned until such time as an SEN expert can attend.
- The jurisdiction of the First-tier Tribunal (Special Educational Needs and Disability) and County Court to hear claims of discrimination relating to a permanent exclusion does not preclude an independent review panel from considering issues of discrimination in reaching its decision.
- Where a panel directs a governing body to reconsider an exclusion it has the power to order that the academy must make a payment of £4000 to the local authority if the governing body does not offer to reinstate the pupil within 10 academy days of receiving notice of the panel's decision. The panel does not have the power to order a payment in circumstances where it has only recommended that the governing body reconsiders their decision.
- The panel may adjourn on more than one occasion, if necessary. However, consideration must be given to the effect of adjournment on the parties to the review, the excluded pupil and any victim.

- Following the review, the panel must issue written notification to all parties without delay. This notification must include:
  - the panel's decision and the reasons for it;
  - where relevant, details of any payment to be made if a governing body subsequently decides not to offer to reinstate a pupil; and
  - any information that must be recorded on the pupil's educational record to reflect the decision (in particular, where a governing body does not decide to reinstate a pupil following a direction to reconsider, it must be noted that the exclusion will not count towards the rule that an admission authority may refuse to admit a child who has been excluded twice.

## **22. Financial Payment**

Where the panel has quashed the governing body's decision, the panel should order that the academy must make a payment directly to the local authority in which the academy is located, unless the governing body offer to reinstate the pupil. The panel should order that the payment is due automatically if the governing body has not offered to reinstate the excluded pupil within 10 academy days of being notified of a direction to reconsider. The panel does not have to reconvene to issue this order. This payment will be in addition to any funding that would normally follow an excluded pupil.

If the governing body offers to reinstate the pupil within the specified timescale but this is declined by the parents, no payment should be made to the local authority. The governing body must comply with any direction of the panel to place a note on the pupil's educational record. This includes noting that, where a pupil is not reinstated following a direction to reconsider, the exclusion does not count towards the rule that an admission authority may refuse to admit a child who has been excluded twice; or in the case of a community or voluntary controlled school, the governing body may appeal against the decision of the local authority as the admission authority to admit the child.

In the case of either a recommended or directed reconsideration, the governing body must notify the following people of their reconsidered decision, and the reasons for it, in writing and without delay:

- the parents;
- the principal;
- EMLC Academy Trust;
- the local authority and, where relevant, the 'home authority'.

Academies should be expected to make payment within 28 days of notification of a direction from the panel. If an academy fails to comply with its legal requirement to pay following a

direction from an independent review panel then the local authority will be responsible for enforcing this requirement. However, the local authority should also inform the Education Funding Agency.

If an excluded pupil has been found a place at another school/academy by the time the governing body has reconsidered and decided not to reinstate the pupil, the local authority may, if it chooses, pass the amount of the payment to the pupil's new school/academy.

### **23. Conducting the Review**

- The chair should outline the procedure to be followed and explain to all parties that the panel is independent of the academy and the EMLC Academy Trust.
- The panel should support all parties to participate in the review and ensure that their views are properly heard. The independent review should be conducted in an accessible, non-threatening and non-adversarial manner.
- It is for the panel to decide whether any witnesses should stay for the rest of the review, but they should not be present before giving evidence.
- In the interests of propriety, care should be taken to ensure that no party, other than the clerk, is present with the panel in the absence of the other parties. This includes the SEN expert. The panel should ask all parties, apart from the clerk, to withdraw before making a decision. The clerk may stay to help the panel by referring to the notes of the meeting and providing advice on the wording of the decision letter.

### **24. Reaching a Decision**

When considering the governing body's decision in light of the principles applicable in an application for judicial review, the panel should apply the following tests:

- Illegality – did the principal and/or governing body act outside the scope of their legal powers in taking the decision to exclude?
- Irrationality – was the decision of the governing body not to reinstate the pupil so unreasonable that it was not one a sensible person could have made?
- Procedural impropriety – was the process of exclusion and the governing body's consideration so unfair or flawed that justice was clearly not done?

Procedural impropriety means not simply a breach of minor points of procedure but something more substantive that has a significant impact on the quality of the decision making process; this will be a judgement for the panel to make.

Where the criteria for quashing a decision have not been met the panel should consider whether it would be appropriate to recommend that a governing body reconsiders their

decision not to reinstate the pupil. This should not be the default option, but should be used where evidence or procedural flaws have been identified that do not meet the criteria for quashing the decision but which the panel believe justify a reconsideration of the governing body's decision.

In all other cases the panel should uphold the exclusion.

## APPENDIX A – SUPPORT SUMMARY AND IMPACT FORM – PUPIL AT RISK OF PERMANENT EXCLUSION

***This form is for a pupil who is at imminent risk of permanent exclusion for persistent disruptive behaviour***

Name of pupil:	Class/tutor group:
Looked After Child (LAC) Yes/No	SEND Yes/No Details:
Date information is requested:	
Section 1 to be completed by Pastoral Lead/Tutor or Senior Leader and returned to Principal by:	

Current government exclusion guidance states that any decision to exclude, 'must be lawful (with respect to the legislation relating directly to exclusions and a school's wider legal duties, including the European Convention of Human Rights); rational; reasonable; fair; and proportionate'.

A decision to exclude a pupil permanently should usually be final step in a process for dealing with disciplinary offences - an acknowledgement by the academy that it has exhausted all available strategies for dealing with the pupil and should normally be used as a last resort.

As an academy we will have to demonstrate that we are already using a range of strategies to support this pupil. Your account below will help me decide what needs to happen next. In the event of a Permanent Exclusion, this form will be included in the evidence presented to parents/carers, relevant external agencies (including Local Authority representatives) and Governors.

Section 1 - To be completed by Pastoral Lead /Tutor or Senior Leader

<b>Interventions to date</b>	<b>Detail</b>	<b>Impact – Level of success</b>
SEND Code of practice including category of need e.g. support plan with behaviour targets and reviews		
Behaviour Plan e.g. academy support offered		

Early Interventions and Strategies		
Alternative Provision		
Outside agency support		
Other e.g. Managed Move		
Completed by : Name: _____ Role: _____		

***This form is for a pupil who is at imminent risk of permanent exclusion for persistent disruptive behaviour***

Name of pupil:	Class/tutor group:
Looked After Child (LAC) Yes/No	SEND Yes/No Details:
Date information is requested:	
Section 2 to be completed by Tutor/Subject Teachers and returned to Principal by:	

Current government exclusion guidance states that any decision to exclude, 'must be lawful (with respect to the legislation relating directly to exclusions and a school's wider legal duties, including the European Convention of Human Rights); rational; reasonable; fair; and proportionate'.

A decision to exclude a pupil permanently should usually be final step in a process for dealing with disciplinary offences - an acknowledgement by the academy that it has exhausted all available strategies for dealing with the pupil and should normally be used as a last resort.

As an academy we will have to demonstrate that we are already using a range of strategies to support this pupil. Your account below will help me decide what needs to happen next. In the event of a Permanent Exclusion, this form will be included in the evidence presented to parents/carers, relevant external agencies (including Local Authority representatives) and Governors.

Section 2 -To be completed by Subject Teachers/Tutor

<b>Support to date</b>	<b>Detail</b>	<b>Impact on pupil's behaviour</b>
Classroom strategies		
Direct support		

Other		
Completed by : Name: <span style="float: right;">Role:</span>		

**APPENDIX B – PUPIL AT RISK OF PERMANENT EXCLUSION**

<b>Pupil at risk of permanent exclusion</b>
<p>When considering whether to exclude, the principal should give a pupil the opportunity to share their views. As principal, I need to know whether there is anything that hasn't already been mentioned at the academy that will help me come to the right decision.</p>
Name:
Date of birth:
Name of adult helping to complete this form (if appropriate):
Is there anything currently happening at the academy that might in some way explain your behaviour?
Has anything happened at the academy in the past that I need to take into consideration?
Is there anything currently happening at home or outside of the academy that might in some way explain your behaviour?
Has anything happened at home or outside the academy in the past that I need to take into consideration?
Date completed:

## **APPENDIX C – WITNESS STATEMENT**

Name of witness

Year group / Role

Academy

Use this space to write in your own words what you saw. Keep to facts like time, date, places and names in your statement. Continue overleaf if necessary.

I believe the facts in this witness statement are true.

Signed by the witness:

Date:

If you have written this statement (word for word as the witness described the events) on behalf of a witness, sign below

Signed:

Date:

Printed name:

## **APPENDIX D – MODEL LETTERS TO PARENTS**

### **Model letter for fixed period exclusion of 5 days or less (but not more than 15 days exclusion in total for the present term\*)**

Dear (Name of Parent)

(Child's name) (Date of birth)

I have today made the decision to exclude your son/daughter, (child's name), for a fixed period of (specify period) days.

This decision has not been taken lightly. As you know, we have tried a number of preventative strategies in an attempt to avoid exclusion that have included (describe the support provided).

However, today the following incident occurred...

(INSERT CLEAR AND FACTUAL DETAILS. AVOID SUBJECTIVE OR JUDGEMENTAL LANGUAGE)

During this exclusion, work will be set and marked by the academy. Please make arrangements to collect this from reception and return the completed work to the academy for marking.

Your child should return to the academy on (date) at (time) (insert details of your academy's re-admittance strategy here).

You have a duty to ensure that your child is not present in a public place in academy hours during this exclusion (specify dates) unless there is reasonable justification for this. I must advise you that you may receive a penalty notice from the Local Authority if your child is present in a public place during academy hours on the specified dates. If this is the case, it will be for you to show reasonable justification as to why your child was in a public place.

You have the right to present your views in writing to the academy's governing body and to do this you should contact (name and address of the clerk to the governing body). You also have the right to see a copy of your child's academy record. To obtain a copy contact the academy office.

### **Contacts**

If you want advice about exclusions you may find it useful to contact or refer to:

- Government statutory guidance on exclusions  
<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion/g00210521/statutory-guidance-regs-2012>

- Coram Children's Legal Centre Tel: 08088 020 008 or on <http://www.childrenslegalcentre.com/> They aim to provide free legal advice and information to parents on state education matters. The advice line is open from 8am to 8pm Monday to Friday.
- First-tier Tribunal (Special Educational Needs and Disability), 1st Floor, Darlington Magistrates Court, Parkgate, Darlington DL1 1RU. Tel: 01325 289350 (should you consider the exclusion relates to a disability).

Yours sincerely

Principal

(Copy to Chair of Governors)

\*please refer to definition of 'term' on page 3

**Model letter for fixed period exclusion between 5½ days and 15 days (but not more than 15 days exclusion in total for the present term\*)**

Dear (Name of Parent)

(Child's name) (Date of birth)

I have today made the decision to exclude your son/daughter, (child's name), for a fixed period of (specify period) days.

This decision has not been taken lightly. As you know, we have tried a number of preventative strategies in an attempt to avoid exclusion that have included (describe the support provided).

However, today the following incident occurred...

(INSERT CLEAR AND FACTUAL DETAILS. AVOID SUBJECTIVE OR JUDGEMENTAL LANGUAGE)

For the first five academy days of the exclusion we will set work for (child's name) and would ask you to ensure this work is completed and returned promptly to the academy for marking. Please make arrangements to collect this from reception.

From the sixth academy day of the exclusion onwards - i.e. from (specify the date) alternative educational provision will be provided. [Insert details here including the address, contact name, start and finish times of full-time education, including the times for morning and afternoon sessions where relevant (where it can reasonably be found out within the timescale)].

Your child should return to the academy on (date) at (time) (insert details of your academy's re-admittance strategy here).

You have a duty to ensure that your child is not present in a public place in academy hours during this exclusion (specify dates) unless there is reasonable justification for this. I must advise you that you may receive a penalty notice from the Local Authority if your child is present in a public place during academy hours on the specified dates. If so, it will be for you to show reasonable justification.

You have the right to request a meeting of the academy's discipline committee to whom you may make representations and to do this you should contact (name and address of the clerk to the governing body).

You also have the right to see a copy of your child's academy record. To obtain a copy contact the academy office.

## Contacts

If you want advice about exclusions you may find it useful to contact or refer to:

- Government statutory guidance on exclusions  
<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion/g00210521/statutory-guidance-regs-2012>
- Coram Children's Legal Centre Tel: 08088 020 008 or on  
<http://www.childrenslegalcentre.com/> They aim to provide free legal advice and information to parents on state education matters. The advice line is open from 8am to 8pm Monday to Friday.
- First-tier Tribunal (Special Educational Needs and Disability), 1st Floor, Darlington Magistrates Court, Parkgate, Darlington DL1 1RU. Tel: 01325 289350 (should you consider the exclusion relates to a disability).

Yours sincerely

Principal

(Copy to Chair of Governors)

\*please refer to definition of 'term' on page 3

**Model letter for any exclusion whereby the total number of days excluded in this term\* exceeds fifteen days**

Dear (Name of Parent)

(Child's name) (Date of birth)

I have today made the decision to exclude your son/daughter, (child's name), for a fixed period of (specify period) days.

This decision has not been taken lightly. As you know, we have tried a number of preventative strategies in an attempt to avoid exclusion that have included (describe the support provided).

However, today the following incident occurred...

(INSERT CLEAR AND FACTUAL DETAILS. AVOID SUBJECTIVE OR JUDGEMENTAL LANGUAGE)

For the first five academy days of the exclusion we will set work for (child's name) and would ask you to ensure this work is completed and returned promptly to the academy for marking.

Please make arrangements to collect this from reception. From the sixth academy day of the exclusion onwards - i.e. from (specify the date)

From the sixth academy day of the exclusion onwards - i.e. from (specify the date) alternative educational provision will be provided. [Insert details here including the address, contact name, start and finish times of full-time education, including the times for morning and afternoon sessions where relevant (where it can reasonably be found out within the timescale)].

Your child should return to the academy on (date) at (time) (insert details of your academy's re-admittance strategy here).

You have a duty to ensure that your child is not present in a public place in academy hours during this exclusion (specify dates) unless there is reasonable justification for this. I must advise you that you may receive a penalty notice from the Local Authority if your child is present in a public place during academy hours on the specified dates. If so, it will be for you to show reasonable justification.

You have the right to give your views to the academy's governing body in writing and to do this you should contact (name and address of the clerk to the governing body).

As the length of the exclusion is more than 15 days in total in one term, the governing body must meet to consider the exclusion. You will be invited to the review meeting where you can give your views to the governing body if you wish. The latest date on which the

governing body can meet is (insert date here – no later than 15 academy days from the date that the governing body is notified).

If you wish to make representations to the governing body you can do so in writing or you can attend to speak to the governors in person. You can, if you wish, be accompanied by a friend or representative. Please advise (name of contact) on/at (contact details – address, phone number, email) as soon as possible, if you have a disability or special needs which would affect your ability to attend a meeting at the academy. Also please inform (name of contact) if it would be helpful for you to have an interpreter present at the meeting.

You will, whether you choose to make representations or not, be notified by the clerk to the governing body of the time, date and location of the meeting.

You also have the right to see a copy of your child's academy record. To obtain a copy contact the academy office.

## **Contacts**

If you want advice about exclusions you may find it useful to contact or refer to:

- Government statutory guidance on exclusions  
<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion/g00210521/statutory-guidance-regs-2012>
- Coram Children's Legal Centre Tel: 08088 020 008 or on  
<http://www.childrenslegalcentre.com/> They aim to provide free legal advice and information to parents on state education matters. The advice line is open from 8am to 8pm Monday to Friday.
- First-tier Tribunal (Special Educational Needs and Disability), 1st Floor, Darlington Magistrates Court, Parkgate, Darlington DL1 1RU. Tel: 01325 289350 (should you consider the exclusion relates to a disability).

Yours sincerely

Principal

(Copy to Chair of Governors)

## **Model letter for a permanent exclusion**

Dear (Name of Parent)

(Child's name) (Date of birth)

I regret to inform you of my decision to permanently exclude (child's name) with effect from (date). This means that (child's name) will not be allowed in this academy unless he/she is reinstated by the governing body.

I realise that this exclusion may be upsetting to you and your family, but the decision to permanently exclude (child's name) has not been taken lightly. (Child's name) has been excluded because:

(The reason for the exclusion should be given in plain English and should be explicit. The principal should make it clear that s/he has investigated the incident fully, has checked whether the incident was provoked by racial or sexual harassment and allowed the pupil to give their version of events.)

You have a duty to ensure that your child is not present in a public place in academy hours during this exclusion (specify dates) unless there is reasonable justification for this. I must advise you that you may receive a penalty notice from the Local Authority if your child is present in a public place during academy hours on the specified dates. If so, it will be for you to show reasonable justification.

For the first five school days of the exclusion we will set work for (child's name) and would ask you to ensure this work is completed and returned promptly to the academy for marking. Please make arrangements to collect this from reception.

From the sixth academy day of the exclusion onwards — i.e. from (specify the date) the Local Authority will provide suitable full-time education and they will be in touch with you about arrangements for his/her education from the sixth academy day of exclusion. You can contact them at (give contact details).

As this is a permanent exclusion the governing body must meet to consider it. The governing body have the power to reinstate your child immediately or from a specified date, or, alternatively, they have the power to uphold the exclusion in which case you may ask for the decision to be reviewed an Independent Review Panel. The latest date by which the governing body can meet is (specify date – the 15th academy day after the date on which the governing body was notified of the exclusion).

If you wish to make representations to the governing body you can do so in writing or you can attend to speak to the governors in person. You can, if you wish, be accompanied by a friend or representative. Please advise (name of contact) on/at (contact details – address, phone number, email) as soon as possible, if you have a disability or special needs which would affect your ability to attend a meeting at the academy. Also please inform (name of

contact) if it would be helpful for you to have an interpreter present at the meeting.

You will, whether you choose to make representations or not, be notified by the clerk to the governing body of the time, date and location of the meeting.

You also have the right to see a copy of your child's academy record. To obtain a copy contact the academy office.

## **Contacts**

If you want advice about exclusions you may find it useful to contact or refer to:

- Government statutory guidance on exclusions  
<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion/g00210521/statutory-guidance-regs-2012>
- Coram Children's Legal Centre Tel: 08088 020 008 or on <http://www.childrenslegalcentre.com/> They aim to provide free legal advice and information to parents on state education matters. The advice line is open from 8am to 8pm Monday to Friday.
- First-tier Tribunal (Special Educational Needs and Disability), 1st Floor, Darlington Magistrates Court, Parkgate, Darlington DL1 1RU. Tel: 01325 289350 (should you consider the exclusion relates to a disability).

Yours sincerely

Principal

(Copy to Chair of Governors)

\*please refer to definition of 'term' on page 3

## APPENDIX E – EXCLUSION REPORTING FORM

Academic Year (Insert details)

Please send this form to the Local Authority with each notification of exclusion; a copy should be given to the governing body.

Name of Academy:

In order to provide full-time education on the 6th day, academies must notify the Local Authority of any permanent exclusion by email or fax. This must be done on the day that the principal makes the decision to exclude.

Surname of Pupil:		Forename of Pupil:	
Date of Birth:	Gender: Male / Female	Year Group:	
Address:			
Name of Parent:		Telephone Number:	
Is the pupil in care?: Yes / No Authority responsible:		Is the pupil subject to a Child Protection Plan?: Yes / No Does the pupil have a CAF: Yes / No Name of Lead professional:	
SEND (e.g. SEMH, MLD)		SEND Support:	

Exclusion: Fixed Period / Permanent		Date of Exclusion:	
Number of days:	Date of return:	Days this term:	
Reason for Exclusion: Please be explicit about the reason. If, for example, the pupil has sworn at a member of staff, state what was said. If there has been violence used by the pupil, say what actually happened. We are now required by the Audit Commission and other agencies to supply reasons for exclusions and the use of terms like "aggressive behaviour" or "abusive language" is not clear. They do not give us a precise picture of the problems that a particular academy is facing. If it is a drug related exclusion, do not use terms such as "illegal or illicit substance", specify which drug.			

Involvement of other professionals (tick all that apply):			
Social Care		Child and Family Service (Health)	
Educational Psychology		School nurse	
Other (please specify):		Police	
		CYPS	
		Youth Support Service	
Please outline their involvement and list any particular contacts. You may wish to attach relevant documents.			

Please complete the following for any <b>permanent</b> exclusion:			
Key Stage 1-3 - Current attainment level:			
English – reading	English – writing	Maths	
Key Stage 4:			
GCSE Subjects	Exam board	Current grade	Predicted grade

**Note:**

Academies must notify the Local Authority and governing body on the day that the principal makes the decision to permanently exclude so that the Local Authority can fulfil its duty to provide alternative provision on the 6th day. All other exclusions must be reported at least once a term.

Signature of principal:

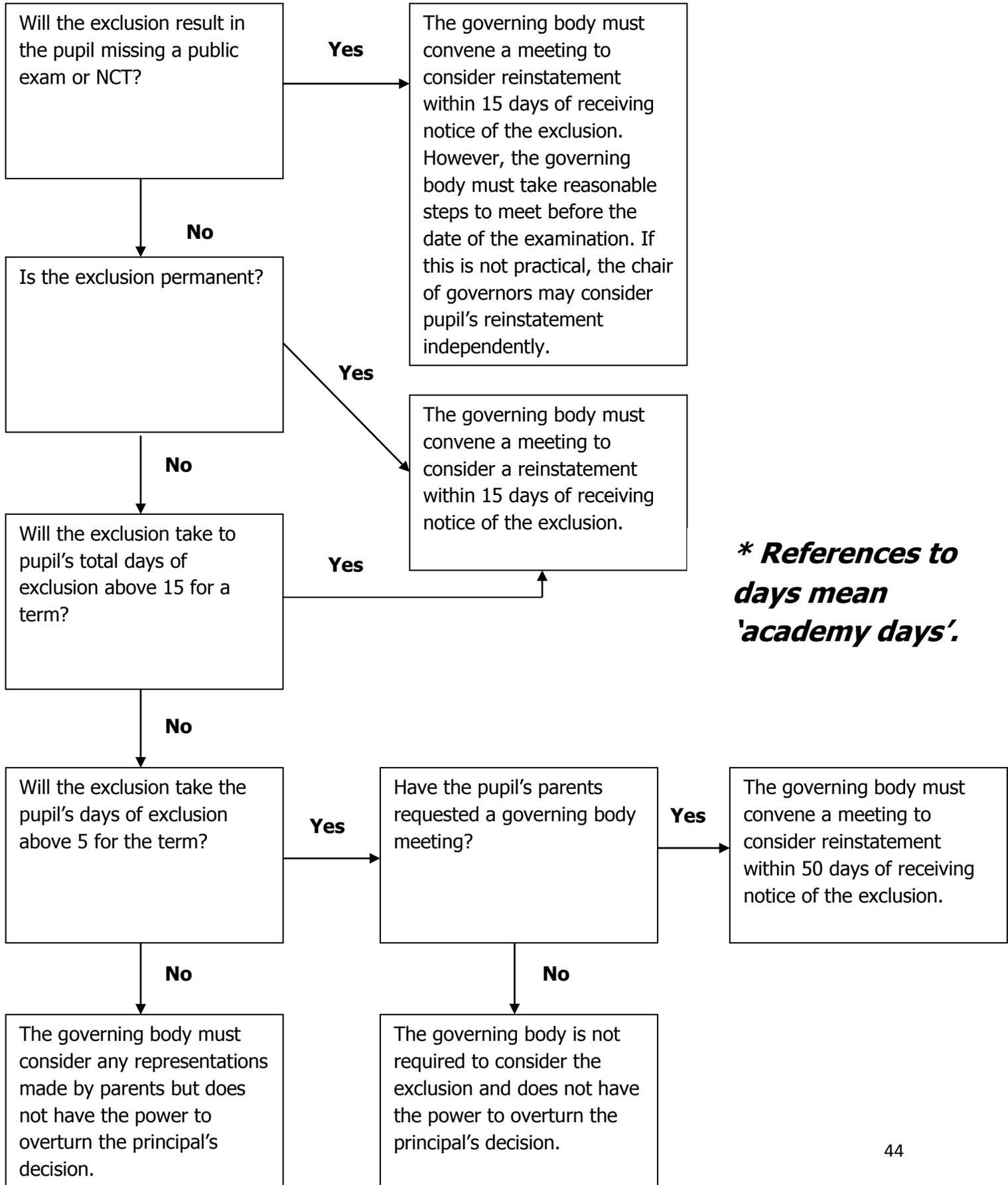
Date:

Return completed form to:

This information is being collected to monitor the educational progress of the named pupil.

The information may also be shared with other agencies involved with the pupil's education or welfare and used to provide statistical data in anonymised form.

## APPENDIX F – A SUMMARY OF THE GOVERNING BODY’S DUTIES TO REVIEW THE PRINCIPAL’S EXCLUSION DECISION



***\* References to days mean 'academy days'.***

## **APPENDIX G – NOTIFICATION OF DECISION FOLLOWING CONSIDERATION OF A FIXED TERM EXCLUSION**

Dear (Name of Parent)

(Child's name) (Date of birth)

The meeting of the governing body at (academy) on (date) considered the decision by (principal) to exclude your son/daughter (name of pupil) for a fixed period of (insert details). The governing body, after carefully considering the representations made and all the available evidence, has decided to (insert details of the outcome of the meeting).

The reasons for the governing body's decision are as follows: (set out reasons for the decision in sufficient detail to enable all parties to understand why the decision was made and how they arrived at that decision).

Your child should return to the academy on (date) at (time), if they have not already done so, (insert details of your academy's re-admittance strategy here).

Yours sincerely

(name)

Clerk to the Governing Body

(copy to LA and academy principal)

## **APPENDIX H – NOTIFICATION OF DECISION FOLLOWING CONSIDERATION OF A PERMANENT EXCLUSION**

Dear (Name of Parent)

(Child's name) (Date of birth)

The meeting of the governing body at (academy) on (date) considered the decision by (principal) to permanently exclude your son/daughter (name of pupil). The governing body, after carefully considering the representations made and all the available evidence, has decided to (insert details of the outcome of the meeting).

The reasons for the governing body's decision are as follows: (set out reasons for the decision in sufficient detail to enable all parties to understand why the decision was made and how they arrived at that decision).

You have the right to a review of this decision by an Independent Review Panel. If you would like to request a review, please notify Duncan Mills, Managing Director, EMLC Academy Trust. You must set out the reasons for requesting a review in writing and send this to EMLC Academy Trust, Bridge House, Bridge Street, Olney, MK46 4AB or via email to [info@emlcacademytrust.co.uk](mailto:info@emlcacademytrust.co.uk) by no later than (specify the latest date — the 15th academy day after receipt of this letter). If you have not requested a review by (repeat latest date), you will lose your right to a review. Please advise if you have a disability or special needs which would affect your ability to attend the hearing. Also, please inform Duncan Mills if it would be helpful for you to have an interpreter present at the hearing.

Your review will be heard by an Independent Review Panel. A three-member panel will comprise one serving, or recently retired (within the last five years), head teacher/principal, one serving, or recently serving, experienced governor member and one lay member who will be the Chairperson. The review panel will rehear all the facts of the case — if you have fresh evidence to present to the panel you may do so. The panel must meet no later than the 15th academy day after the date on which the review request is lodged. In exceptional circumstances panels may adjourn the hearing until a later date.

Following its review the panel can decide to:

- uphold your child's exclusion;
- recommend that the governing body reconsiders their decision; or
- quash the decision and direct that the governing body considers the exclusion again.

You have a right to request the attendance of a Special Educational Needs (SEN) Expert at the review, regardless of whether the school recognises that your child has SEN. The SEN expert's role is to provide impartial advice to the panel about how SEN could be relevant to the exclusion and does not include making an assessment of your child's special educational

needs. There is no cost to yourself for this service but you must make clear that you wish for a SEN expert to be appointed in any application for a review.

You may at your own expense, appoint someone to make written and/or oral representation to the panel or bring a friend to the review.

As stated above you have the right to apply for an independent review panel. In order to assist you to make an informed decision on whether, and if so, how, to seek a review, please see the information at the end of this letter.

In addition if you think the exclusion relates to a disability your child has, and you think disability discrimination has occurred, you have the right to appeal, and/or make a claim, to the First Tier Tribunal, who have the jurisdiction to hear claims of discrimination under the Equality Act 2010, or the County Court (for other forms of discrimination). A claim of discrimination made under these routes should be lodged within six months of the date on which the discrimination is alleged to have taken place e.g. the day on which the pupil was excluded.

If you want advice about exclusions you may find it useful to contact or refer to:

- Government statutory guidance on exclusions  
<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion/g00210521/statutory-guidance-regs-2012>
- Coram Children's Legal Centre Tel: 08088 020 008 or on <http://www.childrenslegalcentre.com/> They aim to provide free legal advice and information to parents on state education matters. The advice line is open from 8am to 8pm Monday to Friday.
- First-tier Tribunal (Special Educational Needs and Disability), 1st Floor, Darlington Magistrates Court, Parkgate, Darlington DL1 1RU. Tel: 01325 289350 <http://www.justice.gov.uk/tribunals/send/appeals> (should you consider the exclusion relates to a disability).

The arrangements currently being made for (pupil's name)'s education will continue. (specify details here).

Yours sincerely

[name]

Clerk to the Governing Body

(copy to LA and academy principal)

