



Beacon Academy Trust

A COMPELLING VISION FOR SUCCESS

EXTERNAL AND PERMANENT EXCLUSION POLICY AND PROCEDURE

Approving Body	Trust
Date of Last Review	January 2018
To be Reviewed	January 2021
Statutory (Y/N)	Y (The Education Act 2002)
Signed/Authorised	

I. INTRODUCTION – PURPOSE AND SCOPE

1. This policy should be read in conjunction with our Safeguarding, Behaviour and Equality Policies. It complies with the requirements of:
 - a. The Education Act 2002, as amended by the Education Act 2011;
 - b. The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012;
 - c. The Education and Inspections Act 2006;
 - d. The Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007; and
 - e. DfE guidance on exclusions, September 2017.
2. This policy is crucial to the efficient management of BMAT. It covers or promotes:
 - a. An improved understanding of BMAT's code of conduct; and
 - b. The involvement of governing bodies and external agencies; and
 - c. Positive behaviour management.
3. 'Exclusion' means any amount of time – fixed or permanent – during which a student is required to be removed from BMAT premises. 'School day' means any day during which there are lessons (INSET days are not school days).
4. This policy and the statutory guidance on exclusions does **not** apply to internal exclusions, because they are not classified as formal/legal exclusions (they do not result in the removal of students from school premises. For information on internal exclusions, please see the BMAT Student Code of Conduct and Behaviour Management Policy.
5. BMAT is committed to equality, safeguarding and promoting the welfare of children and young people:
 - a. When exclusion is necessary, BMAT will strive to maintain a cooperative relationship with and between all involved parties.
 - b. Where BMAT has concerns about a student's behaviour it will try to identify whether there are any causal factors and intervene early in order to reduce the need for subsequent exclusion. BMAT may consider a multi-agency assessment that goes beyond educational needs.

- c. BMAT will tailor a strategy for reintegrating students that return to school following exclusion. This may include Pastoral Support Programmes (PSPs).

II. THE LAWFULNESS OF DECISIONS TO EXCLUDE

6. Students may only be excluded by a school principal. When deciding to exclude a student, school principals **must**:
 - a. Take account of their legal duty of care; and
 - b. Provide students an opportunity to present their case, where appropriate; and
 - c. Apply the civil standard of proof (on the balance of probabilities, it is more likely than not that a fact is true) rather than the criminal standard (beyond reasonable doubt).
7. Any exclusion decision **must** be rational, reasonable, fair and proportionate and in accordance with the relevant legislation and legal duties of BMAT, namely:
 - a. The European Convention on Human Rights [the 'ECHR']; and
 - b. The Equality Act 2010 ['EA'], which prohibits BMAT from discriminating, harassing or victimising students on the grounds of a protected characteristic. BMAT **must** also have due regard to the need to eliminate conduct prohibited by the EA.
 - c. When administering the exclusion process, school principals and the governing bodies **must** take account of their statutory duties in relation to special educational needs and disabilities ['SEND'].
8. Students may be excluded permanently or for one or more fixed periods, up to a maximum of 45 school days per academic year:
9. Permanent exclusions will only be enforced if:
 - a. There is an immediate risk to the safety of the student concerned or other members of BMAT;
 - b. There are serious and/or persistent breaches of BMAT's Student Code of Conduct and Behaviour Management Policy;
 - c. A range of alternative strategies have been attempted unsuccessfully; and
 - d. Allowing the student to remain on-site would seriously harm the education or welfare of others.

10. Unofficial exclusions (e.g. sending students home to cool off) are unlawful, regardless of parental consent.
11. Poor behaviour off-site may lead to exclusion:
 - a. Behaviour off-site but on BMAT business (e.g. trips) will be dealt with as though it took place on-site.
 - b. Behaviour off-site and not on BMAT business may result in exclusion if there is a clear link between that behaviour and maintaining discipline among the student body as a whole, or if there are likely to be repercussions on-site.
12. Fixed-term exclusions cannot be extended or converted into permanent exclusions. If a longer exclusion is required, a new fixed-term or permanent exclusion must be issued to begin immediately after the first one ends.
13. It is unlawful to exclude or increase the length of exclusion for non-disciplinary reasons (e.g. additional needs, academic attainment and the actions of relatives). However, students may be excluded on medical grounds if they are too ill to participate in school activities; the condition creates an unsafe or unhealthy environment for others; or when the illness or injury requires a level of care or observation that cannot reasonably be managed on-site (see 'Medicine Policy').

III. PROCEDURE FOLLOWING A DECISION TO EXCLUDE

14. Any exclusion, no matter how short, **must** be recorded in writing and on students' personal files.
15. Whenever a school principal excludes a student, the parents must be notified immediately (ideally by telephone, but notices of exclusions can be given electronically if parents have given written agreement for notices to be sent in this way), followed by a letter within by the end of the first day of the exclusion. The letter should specify:
 - a. The reasons for exclusion;
 - b. The period of exclusion or the fact that an exclusion is permanent;
 - c. That for the first five school days of an exclusion, or until the start date of alternative provision where this is earlier, they must ensure that their child is not present in a public place during school hours, without justification.
 - d. Their right to make representations to the appropriate governing body and how any representations should be made; and

- e. Their right to attend and be accompanied at meetings of the governing body, where there is a legal requirement for it to meet to consider the exclusion.

16. For the first five school days of exclusion, parents **must** ensure that their child is not present in a public place during school hours, without reasonable justification. Failure to comply may result in prosecution or a fixed penalty.

17. Parents have a right to see/receive a copy of their child's school record, following a request to the appropriate school principal.

18. Alternative Provision:

- a. BMAT will take reasonable steps to set work for students during the first five school days of exclusion.
- b. Alternative provision **must** be arranged from the sixth school day (triggered by consecutive fixed-period exclusions totalling more than five days). For fixed period exclusions of more than five days, this will be by the appropriate governing body. For permanent exclusions, this will be by the Local Authority ['LA'].
- c. The dates, times and location of any alternative provision should be communicated by the end of the afternoon session of the first day of exclusion. Alternatively, it **must** be provided no later than **48 hours** before the provision is due to start.
- d. The only exception is where alternative provision is set before the sixth day of exclusion, in which case the information can be provided with less than **48 hours'** notice, with parents' consent.

19. Notifying the Governing Body and LA:

- a. Without delay, school principals **must** notify the appropriate governing body and the LA of permanent exclusions, exclusions which would result in a student being excluded for more than five days in one term and exclusions which would result in a student missing a public exam.
- b. For all other exclusions, school principals **must** notify the LA and the appropriate governing body once per term.
- c. Notifications **must** include the reasons for and duration of the exclusion.
- d. If a permanently excluded student lives outside the LA in which BMAT is located, then the appropriate school principal **must** advise the student's home authority.

20. Considering reinstatement, where applicable (summary):

- a. The appropriate governing body will convene a meeting to consider the reinstatement of an excluded student within 15 school days of receiving notice of the exclusion if the exclusion is permanent, if it is a fixed-term exclusion which would bring the total number of school days of exclusion to more than 15 in one term, and if it would result in a student missing a public examination (the governing body will take reasonable steps to meet before the exam. If this is not practical, then the governing body will consider the exclusion and decide whether to reinstate).
- b. If requested to do so by parents, the appropriate governing body will consider the reinstatement of an excluded student within 50 school days of receiving notice of the exclusion if the student would be excluded from school for more than five but fewer than 15 school days in one term. Governing bodies cannot direct the reinstatement of students excluded for more than 5 but fewer than 15 school days in the term, if the parents do not make representations.
- c. Where a governing body reviews an exclusion, it considers the reinstatement of the student rather than the decision to exclude itself (DfE guidance, September 2017). Governing bodies can either decline to reinstate the student, direct immediate reinstatement, or direct reinstatement on a particular date. In reaching a decision, governing bodies will consider whether the exclusion was lawful, reasonable and procedurally fair. They will decide whether a fact is true 'on the balance of probabilities'.
- d. Minutes will be taken of meetings, and a record of evidence considered kept. The outcome will also be recorded on the student's educational record.
- e. Governing bodies will notify, in writing, the school principal, parents and the LA of its decision, along with reasons for its decision, without delay.
- f. The requirement to have at least three governors on any committee that considers exclusions only applies to maintained schools. An academy can delegate this function to a smaller committee (if its Trust's articles of association allow it).

IV. PROCEDURE FOR FIXED TERM EXCLUSIONS OF FEWER THAN FIVE DAYS

21. Parents will be informed immediately of the reasons for and duration of their child's exclusion, followed by a letter by the end of the first school day of the exclusion. Notices of exclusions can be given electronically if parents have given written agreement for notices to be sent in this way. Ideally notification of exclusions should be in person or by telephone in the first instance, as this gives parents the opportunity to ask questions or raise concerns directly.
22. The exclusion will be recorded in writing and on the student's file.
23. Where practicable, work for the exclusion will be given to the student before s/he goes off-site. Alternatively, it will be attached to the letter notifying parents of the exclusion.
24. For the duration of the exclusion, parents **must** ensure that their child is not seen in public during the school day without reasonable justification.
25. If the exclusion will result in a student being excluded for more than five but fewer than 15 school days in one term, then parents may request that the governing body consider the reinstatement of the student. The appropriate governing body will only consider reinstatement if requested to do so by parents. Governing bodies cannot direct the reinstatement of students excluded for more than 5 but fewer than 15 school days in the term, if the parents do not make representations.
26. Requests should be made to the Clerk to the Trust, Mr Ebrahim Vawda (evawda@beaconacademytrust.co.uk). Whether parents choose to make representations or not, they will be notified of the time, date and location of any meeting.

V. PROCEDURE FOR FIXED TERM EXCLUSIONS OF MORE THAN FIVE DAYS

27. Parents will be informed immediately of the reasons for and duration of their child's exclusion, followed by a letter by the end of the first school day of the exclusion. Notices of exclusions can be given electronically if parents have given written agreement for notices to be sent in this way. Ideally notification of exclusions should be in person or by telephone in the first instance, as this gives parents the opportunity to ask questions or raise concerns directly.
28. Work for the first five days of exclusion will be given to the student before s/he goes off-site. Thereafter, the appropriate governing body is responsible.

29. As the exclusion will result in the student being excluded for 6-15 days in one term, then parents may request that the appropriate governing body consider the reinstatement of the student. Governing bodies will only consider reinstatement if requested to do so by parents. Governing bodies cannot direct the reinstatement of students excluded for more than 5 but fewer than 15 school days in the term, if the parents do not make representations.
30. Requests should be made to the Clerk to the Trust, Mr Ebrahim Vawda (evawda@beaconacademytrust.co.uk). Whether parents choose to make representations or not, they will be notified of the time, date and location of any meeting.
31. If the exclusion will take the student's total days of exclusion to more than 15 in one term, then the appropriate governing body will consider reinstatement of the student within 15 school days of receiving notice of the exclusion.
32. For the first five school days of exclusion, parents **must** ensure that their child is not present in a public place during school hours, without reasonable justification.

VI. PROCEDURE FOR PERMANENT EXCLUSIONS

33. Parents will be informed immediately of the reasons for and duration of their child's exclusion, followed by a letter by the end of the first school day of the exclusion. Notices of exclusions can be given electronically if parents have given written agreement for notices to be sent in this way. Ideally notification of exclusions should be in person or by telephone in the first instance, as this gives parents the opportunity to ask questions or raise concerns directly.
34. If the situation is serious enough to warrant the immediate removal of the student, then s/he will be excluded with immediate effect. Governing bodies are responsible for removing the name of a student who has been permanently excluded from the school admissions register.
35. Work for the first five days of the exclusion will be given to the student before s/he goes off site. Thereafter, the LA is responsible.
36. The appropriate governing body and LA **must** be notified as soon as possible. Where applicable, the student's home authority **must** also be notified. The appropriate governing body **must** hold a meeting to consider the exclusion within **6-15 days** of being notified.

37. The Clerk to the Trust **must** invite the parents and LA to attend the meeting, at a time that is convenient to all parties. Parents may bring a friend, supporter or legal representative (at their own expense). They will inform the Clerk to the Trust in advance if this is the case.
38. A detailed report **must** be drawn up and circulated to all parties at least **48 hours** prior to the meeting.
39. The appropriate governing body will meet and either uphold the decision to permanently exclude or direct the student's reinstatement. A decision letter will be sent to all parties as soon as possible and no later than **five school days** after the meeting. It will include:
- a. The fact that the exclusion is permanent;
 - b. Notice of parents' right to ask for the decision to be reviewed by an independent review panel, including the date by which an application for an independent review must be made, the name and address to whom an application for a review should be submitted and the point that any application should set out the grounds on which it is being made and that, where appropriate, reference to how the student's SEN are considered to be relevant to the exclusion;
 - c. That, regardless of whether the excluded student has recognised SEN, parents have a right to require BMAT to appoint an SEN expert to attend the review;
 - d. Details of the role of the SEN expert, that there would be no cost to parents for this appointment and that parents must make clear if they wish for an SEN expert to be appointed in any application for a review
 - e. That parents may, at their own expense, appoint someone to make written and/or oral representations to the panel, and parents may also bring a friend to the review
 - f. That if parents believe that the exclusion has occurred because of discrimination, they may make a claim under the Equality Act 2010 to the First-tier Tribunal (SEND), in the case of disability discrimination, or the County Court, in the case of other forms of discrimination. A claim of discrimination made under these routes should be lodged within 6 months of the date on which the discrimination is alleged to have taken place

40. If a permanent exclusion is upheld, then the LA will arrange to assess the student's needs.
41. If the Governing Body decides to reinstate a student, then reinstatement **must** be within **five days** of the decision letter being sent.

VII. APPEALING A DECISION TO UPHOLD A PERMANENT EXCLUSION

42. Parents **must** submit an Appeal Form (Appendix B) to the Clerk to the Trust, Mr Ebrahim Vawda (evawda@beaconacademytrust.co.uk; Beacon Academy Trust, Woodford Bridge Road, Ilford, IG4 5LP):
- a. Within **15 school days** of written notice of the decision to uphold a permanent exclusion; or
 - b. Within **15 school days** of the final determination of a County Court or First-Tier Tribunal (SEND) discrimination claim.
43. Any appeal made outside these time-frames **must** be dismissed.
44. If parents apply within the legal time-frame, then BMAT **must** appoint an Independent Review Panel to meet and review the decision.
45. BMAT **must** take reasonable steps to identify a date for the meeting that all parties can attend. However, the meeting **must** begin within **15 school days** of receiving the application for an appeal.
46. The Panel must constitute either three or five members, representing each of the categories below:
- a. A lay member to chair of the panel who has not worked in any school in a paid capacity, disregarding any experience as a volunteer or school governor. BMAT should decide if legal qualifications are required.
 - b. School governors, who have served as such for at least 12 consecutive months in the last five years, provided they have not been teachers or school principals during this time.
 - c. School principals or individuals who have been a school principal within the last five years.
47. A person may not serve as a member of the Panel if they:
- a. Are a member or director of BMAT or the governing body of the excluding school;
 - b. Are the school principal of the excluding school or anyone who has held this position in the last five years;

- c. Have, or at any time have had, any connection (to BMAT or excluding school; student and/or parents; or the incident concerned) which might reasonably be taken to raise doubts about their impartiality. An individual must not be taken to have such a connection just because they are principal of another school).
- d. Have a conflict of interest, which they **must** declare at the earliest opportunity.

48. BMAT **must** ensure that the Clerk and all panel members have received training within two years prior to the review, which **must** cover:

- a. The requirements of the primary legislation, regulations and statutory guidance on exclusion;
- b. How the principles of judicial review relate to the panel's decision making process (as per Para.7).
- c. The role of the chair and the clerk; and
- d. The duty to act compatibly with the rights protected by the Human Rights Act 1998, as per s.6 of that Act.

49. The clerk to the panel should not have served as clerk to the governing board in the meeting at which the decision was made not to reinstate the student.

50. The venue for an independent review panel must be accessible to all parties.

BMAT will consider what reasonable adjustments, if any, should be made under the Equality Act 2010 to support the attendance and contribution of parties at the review.

51. All parents have the right to request the presence of an SEN expert at a meeting of the Panel. The SEN expert must be someone with expertise and experience of SEN and be considered by BMAT to perform the functions specified in the legislation. There is no cost to parents for the appointment and that parents must make it clear in any application for a review if they wish for the expert to be appointed.

52. The panel's decision should not be influenced by any stated intention of the parents or student not to return to the school. If parents are not considering the reinstatement of the student, the panel should acknowledge this but it should not affect the conduct of the panel or its decision. The focus of the panel's decision is whether there are sufficient grounds for them to direct or recommend that the governing body reconsider its decision to uphold the exclusion.

53. The panel does not have the power to direct the appropriate governing body to reinstate a permanently excluded student:

- a. Where the Panel decides that the Governing Body's decision is flawed on judicial review grounds, it may recommend or direct that the decision is reconsidered.
- b. Where the Panel recommends or directs reconsideration, the appropriate governing Body **must** reconvene to consider doing so within **10 school days** of being notified. The governing body may still reach the same conclusion as before, but it may face challenge in the courts if it refuses to reinstate the student without strong justification.
- c. Local authorities cannot require academies to make any additional payments following a permanent exclusion, other than the payments which academies have to make under their funding agreements (for more information, see Section Paragraphs 181-186, DfE Guidance on Exclusion, September 2017).

APPENDIX A – NATIONAL STANDARD LIST OF REASONS FOR EXCLUSION

PP - Physical assault against student

- Fighting
- Violent behaviour
- Wounding
- Obstruction and jostling

PA - Physical assault against adult

- Violent behaviour
- Wounding
- Obstruction and jostling

VP - Verbal abuse / threatening behaviour against student

- Threatened violence
- Aggressive behaviour
- Swearing
- Homophobic abuse and harassment
- Verbal intimidation
- Carrying an offensive weapon

VA - Verbal abuse / threatening behaviour against adult

- Threatened violence
- Aggressive behaviour
- Swearing
- Homophobic abuse and harassment
- Verbal intimidation
- Carrying an offensive weapon

BU - Bullying

- Verbal bullying

- Physical bullying
- Homophobic bullying
- Racist bullying

RA - Racist abuse

- Racist taunting and harassment
- Derogatory racist statements
- Swearing that can be attributed to racist characteristics
- Racist bullying
- Racist graffiti

SM - Sexual misconduct

- Sexual abuse
- Sexual assault
- Sexual harassment
- Lewd behaviour
- Sexual bullying
- Sexual graffiti

DA - Drug and alcohol related

- Possession of illegal drugs
- Inappropriate use of prescribed drugs
- Drug dealing
- Smoking
- Alcohol abuse
- Substance abuse

DM - Damage

- Damage to school or personal property
- Vandalism
- Arson
- Graffiti

TH - Theft

- Stealing school property
- Stealing personal property (student or adult)
- Stealing from local shops on a school outing

- Selling and dealing in stolen property

DB - Persistent disruptive behaviour:

- Challenging behaviour
- Disobedience
- Persistent violation of school rules

OT - Other

Includes incidents which are not covered by the categories above, but this category should be used sparingly.

APPENDIX B – APPEALING DECISION NOT TO REINSTATE

<u>CONTACT DETAILS</u>	
Complainant's Name	
Address	
Telephone Number	
Email Address	
Name of Student	
Relationship to Student	
<u>APPEAL INFORMATION</u>	
Date	
Date of the Governing Body's meeting to review	
Did you receive a decision letter from the Governing Body within 5 school days of its meeting?	Yes <input type="checkbox"/> No <input type="checkbox"/>

<p>Summary of Appeal –</p> <p>Why do you think that the student(s) concerned should be reinstated?</p> <p>Attach additional sheets if required.</p>	
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<u>APPEAL INFORMATION</u>	
<p>Declaration</p>	<p>I confirm that the above statements are true to the best of my knowledge, information and belief.</p> <p><u>Signature:</u></p>