

Staffordshire University Academies Trust		Trust Policy Document			
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SUAT Exclusions Policy

The rules governing exclusions from SUAT academies are contained in the s52 of the Education Act 2002.

Section 52(1) of the Education Act 2002 states that the head teacher of a maintained school may exclude a pupil from the school for a fixed period or permanently.

What are the different types of exclusion?

A **fixed term exclusion** is for a specific period of time. A pupil may be excluded for one or more fixed periods (up to a maximum of 45 school days in a single academic year). In exceptional cases, usually where further evidence has come to light, a fixed period exclusion may be extended or converted to a permanent exclusion.

Pupils whose behaviour at lunchtime is disruptive may be excluded from the academy premises for the duration of the lunchtime period. An exclusion that takes place over a lunchtime would be counted as half a school day.

A **permanent exclusion** involves the child being removed from the school roll. However, the Principal must not remove a pupil's name from the school admissions register until the outcome of the Independent Review Panel (if this route is followed by parents).

In what circumstances can a child be excluded from a SUAT Academy?

A pupil must only be excluded on disciplinary grounds. The decision to exclude must be:

- Lawful
- Rational
- Reasonable
- Fair; and
- Proportionate

The behaviour of pupils outside of a SUAT academy may be considered as grounds for exclusion. The individual Academy's behaviour policy will set out when a pupil's behaviour outside of that academy's premises may lead to disciplinary sanctions.

In a SUAT Academy the decision to exclude a pupil **permanently** should only be taken:

*"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".*

When reaching the decision to exclude a child, the Principal must apply the civil standard of proof, i.e. 'on the balance of probabilities' which means it is more likely than not that a fact is true.

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Under the **Equality Act 2010** SUAT academies will not discriminate against, harass or victimise pupils because of their:

- sex
- race
- disability
- religion or belief
- sexual orientation
- because of a pregnancy / maternity
- because of a gender reassignment.

For disabled children, in our academies, this includes a duty to make reasonable adjustments to policies and practices.

It is unlawful to exclude or to increase the severity of an exclusion for a non-disciplinary reason. For example, it would be unlawful to exclude a pupil simply because they have additional needs or a disability that the academy feels it is unable to meet. It would also be unlawful to exclude for a reason such as:

- academic attainment / ability
- the action of a pupil's parents
- the failure of a pupil to meet specific conditions before they are reinstated such as attend a reintegration meeting.

However, a Principal in our academies could lawfully exclude a child for:

- Repeated failure to follow academic instruction
- Failure to complete a behavioural sanction, e.g. a detention, a decision to change the sanction to exclusion would not automatically be unlawful
- Repeated and persistent breaches of the academy's behavioural policy. Even if the offence that has immediately led to the exclusion would not have normally constituted a serious enough breach on its own a child can still be excluded if it is part of wider pattern of behaviour. These duties need to be taken into account when deciding whether to exclude a pupil
- Formally arranged part-time timetables may be necessary as a temporary measure in exceptional circumstances to meet a pupil's needs but must not be used as a disciplinary sanction and is not a long term solution.

What are the factors the Principal of a SUAT Academy should consider before deciding to exclude?

The decision on whether to exclude is for a Principal to take. Pupils should be given an opportunity to present their case before the decision to exclude. When considering whether to exclude, Principals should take account of any contributing factors that are identified after an incident of poor behaviour has occurred. For example, where it comes to light that a pupil has suffered bereavement, has mental health issues or has been subject to bullying.

Our guidance is clear that early intervention should be used to address underlying causes of disruptive behaviour. This should include:

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- an assessment of whether appropriate support is in place to support any Special Educational Needs or disability that a pupil may have
- the use of a multi-agency assessment for pupils who demonstrate persistent disruptive behaviour.
- Where a pupil has received multiple exclusions or is approaching the legal limit of 45 school days of fixed period exclusion in an academic year, Principals should consider whether exclusion is providing an effective sanction.
- The Trust Board has delegated to its Local Academy Councils the power to direct a pupil off-site for education to improve his or her behaviour (**section 29A of the Education Act 2002**). If the Academy decide to use this power, under the **Education (Educational Provision for Improving Behaviour) (Amendment) Regulations 2012** they must:
 - ensure that parents (and the Local Authority where the pupil has a Statement of Special Educational Needs or an Educational Healthcare Plan—EHCP) are given clear information about the placement: why, when, where, and how it will be reviewed
 - keep the placement under review and involve parents in the review. The regulations specify regular reviews but do not specify how often reviews must take place (that should be decided on a case-by-case basis). Reviews should be frequent enough to provide assurance that the off-site education is achieving its objectives and that the pupil is benefitting from it; and
 - have regard to guidance from the **Secretary of State** on the use of this
 - A pupil can also be transferred to another school / academy as part of a 'managed move.' This is to allow the pupil to have a fresh start in a new school and is an alternative to an exclusion. Managed Moves must only be arranged with the consent of the parties involved, including the parents. The threat of exclusion must never be used to influence parents to remove their child from the academy. Managed Moves are usually subject to a trial period in the new school. Pupils can be returned to the original academy if the placement fails.

It is unlawful for a child to be informally excluded from any SUAT Academy.

Can a child be informally excluded?

An informal exclusion involves a child being sent off the academy's premises, where this is not officially recorded as an exclusion (e.g. where a child is sent home for a 'cooling off' period). It is unlawful for a child to be informally excluded from our academies, even where the child's parent/s or carer/s agree to the exclusion. If a parent believes that their child has been unlawfully excluded they should as a first course of action pursue an internal complaint within the academy using the SUAT Complaints Procedure.

What are the school's obligations when a child has Special Educational Needs (SEN) or is Looked After?

There are certain groups of pupils with additional needs who are particularly vulnerable to exclusion. This includes pupils with Statements of Special Educational Needs (SEN) or an Education Health Care Plan (EHCP) and Looked after Children.

In SUAT academies Principals should, as far as possible, avoid excluding permanently any pupil with a statement of SEN or EHCP or a Looked after Child. Academies should engage proactively with parents in supporting the behaviour of pupils with additional needs. In

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relation to Looked after Children, academies should co-operate proactively with foster carers or children's home workers and the Local Authority that looks after the child. Where an academy has concerns about the behaviour, or risk of exclusion, of a child with additional needs, a pupil with a statement of SEN, an EHCP or 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. This should involve assessing the suitability of support for a pupil's SEN. Where a pupil has a statement of SEN or EHCP, our academies should consider requesting an early annual review or interim / emergency review.

What is the procedure for excluding a pupil in a SUAT Academy?

When a Principal decides to exclude a pupil, the parent /s or carer/s should be notified immediately, usually by telephone, followed by a letter without delay. The letter must state:

- If the exclusion is permanent
- If the exclusion is fixed-term, the precise period of the exclusion
- The reasons for the exclusion
- The parent's right to make representations to the Local Academy Council, and how the pupil can be involved in this;
- Who to contact about making such representations
- The right on written request to see copies of a child's school record
- The arrangements made by the academy for the pupil to continue their education during the first five days of the exclusion, including setting and marking of work. It is the parents' responsibility to ensure that work sent home is completed by the pupil and returned to the academy
- The school days (or school day from) which the pupil will be provided with alternative suitable education.

What is the procedure for reintegrating a pupil in a SUAT Academy?

A pupil returning after a period of exclusion will be required to attend a formal reintegration meeting with their parents / carers and relevant academy staff.

What are the obligations of parents during a period of exclusion?

During the first five days of a period of exclusion (whether fixed-term or permanent), the parents of an excluded pupil, who is of compulsory school age, must make sure that he or she is not present in a public place during school hours, unless there is a reasonable justification. Failing to ensure this is an offence. If the academy thinks that parents could better influence the behaviour of the pupil, a parenting contract may be offered. A parenting contract is an agreement between the academy and parents that they will both support the child in improving their behaviour.

For a fixed period exclusion of more than five school days, the Local Academy Council must arrange suitable full-time education for any pupil of compulsory school age (for example; home tutoring, a pupil referral unit or online studies). This provision must begin no later than the sixth day of the exclusion. This duty is set out in **section 100 of the Education and Inspections Act 2006**.

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For permanent exclusions, the Local Authority must arrange suitable full-time education for the pupil, again of compulsory school age, to begin no later than the sixth day of the exclusion. This duty is set out in **section 19 of the Education Act 1996**.

In addition, where a pupil has a Statement of Special Educational Needs or Education Health Care Plan the Local Authority must ensure that an appropriate full-time placement is identified in consultation with the parents.

Does the Academy have to provide education during the first 5 school days of an exclusion?

It is important for our academies to help minimise the disruption that exclusion can cause to an excluded pupil's education. Whilst the statutory duty 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.

Where it is not possible, or appropriate, to arrange alternative provision during the first five school 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.

When will the Local Academy Council review an exclusion?

The Local Academy Council has a duty to consider parents' representations about an exclusion. The extent of this duty and how it is exercised depend on the length and nature of the exclusion.

The Local Academy Council must consider the reinstatement of an excluded pupil within 15 school 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 school days of exclusion to more than 15 in term
- it would result in a pupil missing a public examination or national curriculum test.

Where an exclusion would result in a pupil missing a public examination or national curriculum test there is a further requirement for a Local Academy Council to consider exclusion before the date of the examination or test. If this is not possible, the Chair of the Local Academy Council may consider the exclusion independently and decide whether or not to reinstate the pupil. 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.

If a child has been excluded for a period of more than 5 school days, but not more than 15, in a single term then the parents can request that the Local Academy Council consider the reinstatement of the child. In these circumstances the Local Academy Council must consider the reinstatement within 50 school days of receiving notice of the exclusion. This may not affect the actual exclusion as the child is likely to have completed their exclusion prior to the Local Academy Council considering reinstatement, but if the Local Academy Council did

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decide to overturn the exclusion and direct reinstatement a record to this effect would be added to the child's school records.

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 Local Academy Council must consider any representations made by parents, but it cannot direct reinstatement and is not required to arrange a meeting with parents.

What will happen at a Local Academy Council meeting?

The following parties must be invited to a meeting of the Local Academy Council and allowed to make representations:

- parents / carers
- the Principal

The Local Academy Council must:

- ask for any written evidence in advance of the meeting (including witness statements and other relevant information held by the school, such as those relating to a pupil's Special Educational Needs).
- circulate any written evidence and information, including a list of those who will be present, to all parties at least five school days in advance of the meeting.
- allow parents and pupils to be accompanied by a friend or representative.
- identify the steps they will take to enable and encourage the excluded pupil to attend the meeting and speak on his / her own behalf, taking into account the pupil's age and understanding; or by other means if attending the exclusion meeting is not possible.

When considering the exclusion, the Local Academy Council must consider:

- the interests and circumstances of the excluded pupil
- the circumstances in which the pupil was excluded
- have regard to the interests of other pupils and people working at the Academy.

When establishing the facts in relation to an exclusion decision the Local Academy Council 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.

In reaching a decision on whether or not to reinstate a pupil, the Local Academy Council must consider whether the decision to exclude the pupil was lawful, reasonable and procedurally fair, taking account of the Academy Principal's legal duties.

In the light of their consideration, the Local Academy Council 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 Local Academy Council must, in any event, consider whether the Principal's decision to exclude the child was justified based on the evidence.

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The Local Academy Council must notify parents, the Principal, the Trust Board and the Local Authority (if relevant) of their decision, and the reasons for their decision, in writing and without delay.

The Local Academy Council should set out the reasons for their decision in sufficient detail to enable all parties to understand why the decision was made. In the case of a permanent exclusion the Local Academy Council's notification must also include the information below:

- The fact that it is permanent.
- Notice of parents' right to ask for the decision to be reviewed by an independent review panel and the following information:
 - a) the date by which an application for a review must be made
 - b) the name and address to whom an application for a review (and any written evidence) should be submitted;
 - c) that any application should set out the grounds on which it is being made and that, where appropriate, this should include a reference to how the pupil's special educational needs are considered to be relevant to the exclusion;
 - d) that parents have a right to require the Academy Trust to appoint a Special Educational Needs (SEN) expert to attend the review;
 - e) details of the role of the SEN expert and that there would be no cost to parents for this appointment;
 - f) that parents must make clear if they wish for a SEN expert to be appointed in any application for a review; and
 - g) that parents may, at their own expense, appoint someone to make written and / or oral representations to the panel and that parents may also bring a friend to the review.

1. That, in addition to the right to apply for an Independent Review Panel, if parents believe that the exclusion has occurred as a result of discrimination then they may make a claim under the **Equality Act 2010** to the **First-Tier Tribunal** (Special Educational Needs and Disability), in the case of disability discrimination, or the County Court, in the case of other forms of discrimination.
2. That 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.

What will happen at an Independent Review Panel?

If the Local Academy Council uphold a permanent exclusion, parents have the right to request that their decision is reviewed by an Independent Review Panel (IRP). Parents must lodge their application for a review, with the Local Academy Council, within 15 school days of notice being given to the parents by the Local Academy Council.

These are strict deadlines and any application made outside of the legal time frame must be rejected by the Local Academy Council.

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Parents may request an Independent Review Panel even if they did not make a case to, or attend, the meeting at which the Local Academy Council considered the exclusion.

Parents must submit written representations and, if applicable, supporting evidence, when lodging their application.

The Local Academy Council must constitute the panel with either three or five members:

- a lay member to chair the panel
- one (or two for a 5 member panel) school governor who has 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, and
- one (or two for a 5-member panel) head teachers or individual who has been a head teacher within the last five years.
- A clerk will also be present to provide advice to the panel and parties to the review on procedure, legislation and statutory guidance on exclusions. The clerk does not take part in the decision making process.

The role of the panel is to review the Local Academy Council'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 can decide to:

- uphold the exclusion decision;
- recommend that the Local Academy Council reconsiders their decision, or
- quash the decision and direct that the Local Academy Council considers the exclusion again.

When considering the Local Academy Council's decision, the panel should apply the following tests which need to be satisfied to quash the decision:

- **Illegality** - did the Principal and / or Local Academy Council act outside the scope of their legal powers in taking the decision to exclude?
- **Irrationality** - was the decision of the Local Academy Council 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 Local Academy Council's consideration so unfair or flawed that justice was clearly not done?

If any of these criteria are met then the panel can quash the decision of the Local Academy Council and direct that they consider the exclusion again.

Where the criteria for quashing a decision have not been met the panel should consider whether it would be appropriate to recommend that the Local Academy Council reconsiders their decision not to reinstate the pupil. This should be used where evidence or procedural flaws have been identified that do not meet the criteria for quashing the decision but which

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the panel believe justify a reconsideration of the Local Academy Council's decision. In all other cases the panel should uphold the exclusion.

There is no further right of appeal against the decision of an Independent Review Panel.

However there are two ways that the decision may be challenged:

If you feel that the review panel process was unfairly run, you may be able to take this further by complaining about maladministration by the IRP. A successful complaint may result in a recommendation that a new IRP should be arranged, but the decision to uphold the exclusion cannot be overturned. For academies a complaint should be made to the Secretary of State who will pass the complaint to the **Education Skills Funding Agency (ESFA)**.

Can I request a Special Educational Needs expert attend the Independent Review panel?

Parents have a right to request the attendance of a SEN expert at the review panel, regardless of whether or not the Academy recognises that their child has SEN. 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 in relation to SEN and disability.

SEN experts must be impartial. The SEN expert can be employed by another Local Authority or Academy Trust but 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 purpose of this is to avoid a conflict of interest.

The appointment of an SEN expert is for the Academy 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. The Special Educational Needs (SEN) expert's role is similar to an expert witness. They should provide impartial advice to the panel on how special educational needs might be relevant to the exclusion. The SEN expert should base their advice on the evidence provided to the panel. The SEN expert's role does not include making an assessment of the pupil's special educational needs.

The focus of the SEN expert's advice should be on whether the academy's policies which relate to SEN, or the application of these policies in relation to the excluded pupil, were legal, reasonable and procedurally fair. If the SEN expert believes that this was not the case he / she should advise the panel on the possible contribution that this could have made to the circumstances of the pupil's exclusion.

Where the academy does not recognise that a pupil has SEN, the SEN expert should advise the panel on whether he / she believes the academy acted in a legal, reasonable and procedurally fair way with respect to the identification of any special educational needs that the pupil may potentially have, and any contribution that this could have made to the circumstances of the pupil's exclusion.

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What happens when the Independent Review Panel recommends the Local Academy Council reconsiders the exclusion?

Where the Independent Review Panel directs or recommends that the Local Academy Council reconsiders their decision, the Local Academy Council must reconvene within 10 school days of being given notice of the IRP's decision.

If, following a direction to reconsider, the Local Academy Council does not offer to reinstate the pupil within 10 school days of being notified of the panel's decision, an adjustment may be made to the Academy's budget for a sum to be negotiated with the Local Authority.

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

- the parents / carers
- the Principal
- the 'home authority'.

If the Local Academy Council upholds the exclusion again, there is no further right to refer the matter to the IRP. However the decision may be challenged by an application for Judicial Review. In order to bring an action for judicial review, this would have required the Local Academy Council to have made an error in law/ acted unreasonably/ in breach of natural justice. The application for judicial review should be made promptly but at least within three months of the date of the decision. You would need legal representation should you decide to pursue this course of action.

When can I bring a judicial review claim against the decision of the Independent Review Panel?

As noted above, there is no appeal from the decision of an appeal panel. However, the decision may be subject to judicial review, and the judge could quash the original decision and order that a fresh hearing is arranged. In order to bring an action for judicial review, this would have required the IRP to have made an error in law/ acted unreasonably/ in breach of natural justice. The **application for judicial review** should be made promptly but at least within three months of the date of the decision. You would need legal representation should you decide to pursue this course of action.

Examples of potential maladministration that could lead to a complaint include the following:

- The panel was not properly constituted, e.g. a member of the panel was not truly independent and had links to the school
- The panel relied on information provided by the academy that has subsequently been shown to be false
- A parent was not allowed to properly participate in the proceedings
- A parent did not receive proper notice of the panel hearing.

Parents have a right to request the attendance of a SEN expert at the review panel

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What can I do if the exclusion involved disability discrimination?

If parents believe that the exclusion has occurred as a result of discrimination then they may make a claim under the **Equality Act 2010** to the **First-tier Tribunal (Special Educational Needs and Disability)**, in the case of disability discrimination.

In order to fall under the protection of the *Equality Act 2010*, a pupil needs to be classed as 'disabled' for the purposes of the Act. A person is disabled if they have a physical/mental impairment which is long term (has lasted or will last for more than 12 months) and has a substantial effect on their ability to carry out normal day to day activities. The academy is under a duty not to discriminate against a person who is classed as disabled for the purposes of the act.

The *Equality Act 2010* requires that educational establishments must take reasonable steps to ensure that disabled pupils are not substantially disadvantaged compared with pupils who are not disabled. Educational establishments have a duty to avoid the substantial disadvantage caused by a provision criterion or practice. The duty applies to the provision of education and access to any benefit, service or facility. When the duty arises, the issue to be considered is whether the adjustment is reasonable. When deciding whether the adjustment is reasonable a number of factors will be taken into account including the financial resources available, the cost of taking a particular step and the extent to which it is practicable to take a particular step. Discrimination will only occur if the failure to make reasonable adjustments has put the pupil at a substantial disadvantage compared to their non-disabled peers.

In addition, schools have a duty to ensure that a disabled pupil is not treated unfavourably because of something connected with his/her disability. This is called discrimination arising from disability. This will occur when the academy treats a disabled pupil unfavourably, this treatment is because of something connected with the disabled pupil's disability and the school cannot justify the treatment by showing that it is a proportionate means of meeting a legitimate aim.

Claims for Disability Discrimination would be lodged with the First-Tier Tribunal. There is strict time limit of 6 months from the date of the alleged discrimination for lodging a claim. A successful claim may result in a declaration that the Academy has discriminated against the pupil, an apology for this discrimination and a change in school policy.

Parents can make a claim to the Tribunal for any type of exclusion, fixed term or permanent. For permanent exclusions, this right is in addition to the right to request a review by an Independent Review Panel.