



EXCLUSION OF PUPILS POLICY

ST MARY'S AND ST SAVIOUR'S

Reviewed by the Local Governing Body: **Spring 2019**

To be reviewed: **Annually**

Next review: **Spring 2020**

Date Approved by the Genesis Education Trust Board: **Summer 2019**

** Executive Head/ Head Teacher/Head of School/Associate Head (henceforth referred collectively as Head Teacher [HT], unless specifically stated)*

**This policy adheres to DfE statutory guidance last revised in September 2017,
'Exclusion from maintained schools, academies and pupil referral units in England'.**

Rationale

The purpose of this policy is to explain the School's use of exclusion. It is underpinned by the shared commitment of all members of the School community to achieve two important aims:

- (a) The first is to ensure the safety and well-being of all members of the school community, and to maintain an appropriate educational environment in which all can learn and succeed;
- (b) The second is to realise the aim of reducing the need to use exclusion as a sanction.

Introduction

The decision to exclude a student will be taken in the following circumstances:

- (a) In response to a serious breach of conduct.
- (b) If allowing the student to remain in School would seriously harm the education or welfare of the student or others in the School.

Exclusion is an extreme sanction and only to be used in the last resort. It is only administered by the Headteacher (or, in the absence of the Headteacher, the Deputy Head teacher who is acting in that role).

Exclusion, whether fixed term or permanent, may be used for any of the following, all of which constitute examples of unacceptable conduct:

- Verbal abuse to Staff and others
- Verbal abuse to students
- Physical abuse to/attack on Staff
- Physical abuse to/attack on students
- Persistent disruptive behaviour
- Indecent behaviour
- Damage to property
- Misuse of illegal drugs
- Misuse of other substances
- Theft
- Serious actual or threatened violence against another student or a member of staff
- Sexual abuse or assault
- Supplying an illegal drug
- Carrying an offensive weapon
- Arson

- Unacceptable behaviour which has previously been reported and for which School sanctions and other interventions have not been successful in modifying the student's behaviour.

This is not an exhaustive list and there may be other situations where the Headteacher makes the judgement that exclusion is an appropriate sanction.

The decision to exclude a pupil must be lawful, reasonable and fair. Schools have a statutory duty not to discriminate against pupils on the basis of protected characteristics, such as disability or race. Schools should give particular consideration to the fair treatment of pupils from groups who are vulnerable to exclusion.

The head teacher and governing board must comply with their statutory duties in relation to SEN when administering the exclusion process. This includes having regard to the SEND Code of Practice.

Early intervention to address underlying causes of disruptive behaviour should include an assessment of whether appropriate provision is in place to support any SEN or disability that a pupil may have. The head teacher should also consider the use of a multi-agency assessment for a pupil who demonstrates persistent disruptive behaviour.

Disruptive behaviour can be an indication of unmet needs. Where there are concern about a pupil's behaviour, the school should try to identify whether there are any causal factors and intervene early in order to reduce the need for a subsequent exclusion.

General factors the school considers before making a decision to exclude

Before deciding whether to exclude a student either permanently or for a fixed period the school will:

- Ensure appropriate investigations have been carried out
- Consider all the evidence available to support the allegations/incident
- Allow the student to give her/his version of events
- Check whether the incident may have been provoked.

When establishing the facts in relation to an exclusion decision the head teacher 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.' This means that the head teacher should accept that something happened if it is more likely that it happened than that it did not happen.

Exercise of discretion

In reaching a decision, the HT will always look at each case on its own merits. Therefore, a tariff system, fixing a standard penalty for a particular action, is both unfair and inappropriate.

In considering whether permanent exclusion is the most appropriate sanction, the Headteacher will consider a) the gravity of the incident, or series of incidents, and whether it constitutes a serious breach of conduct b) the effect that the student remaining in the School would have on the education and welfare of other students and staff.

Alternatives to exclusion

The School works closely with the Local Authority and other primary schools to undertake managed moves where such a course of action would be of benefit both to the student and the two schools concerned. It also explores the possibility of alternative provision e.g. at a Pupil Referral Unit. In some circumstances, neither of the above would be appropriate.

Behaviour outside school

Pupils' behaviour and conduct outside school on 'school business' such as school trips and journeys, or at school sports events, is subject to the same expectations as within school. Poor behaviour in these circumstances will be dealt with as if it had taken place in school.

Exclusion procedure

Whenever a head teacher excludes a pupil they must, without delay, notify parents of the period of the exclusion and the reason(s) for it.

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

- the reason(s) 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 board and how the pupil may be involved in this;
- how any representations should be made; and
- where there is a legal requirement for the governing board to consider the exclusion, that parents have a right to attend a meeting, to be represented at that meeting (at their own expense) and to bring a friend.

Where an excluded pupil is of compulsory school age the head teacher must also notify the pupil's parents of the days on which they must ensure that the pupil is not present in a public place at any time during school hours. These days would be the first five school days of an exclusion (or until the start date of any alternative provision or the end of the exclusion where this is earlier).

Although this must not delay notification, ideally, notification should be in person or by telephone in the first instance as this would give the parents an opportunity to ask any initial questions or raise concerns directly with the head teacher.

When notifying parents about an exclusion, the head teacher should draw attention to relevant sources of free and impartial information. This information should include:

- a link to this statutory guidance on exclusions (<https://www.gov.uk/government/publications/school-exclusion>);
- a link to sources of impartial advice for parents such as the Coram Children's Legal Centre (www.childrenslegalcentre.com), or ACE Education (<http://www.ace-ed.org.uk>) and their advice line service on 03000 115 142 on Monday to Wednesday from 10 am to 1 pm during term time); and
- where considered relevant by the head teacher, links to local services, such as Traveller Education Services, the Information Advice & Support Services Network (formerly known as the local parent partnership) (<https://councilfordisabledchildren.org.uk/information-advice-and-support-services-network/about>), the National Autistic Society (NAS) School Exclusion Service (England) (0808 800 4002 or schoolexclusions@nas.org.uk), or Independent

The head teacher must, without delay, notify the governing board and the local authority of:

- any permanent exclusion (including where a fixed-period exclusion is followed by a decision to permanently exclude the pupil);
- any exclusion which would result in the pupil being excluded for a total of more than five school days (or more than ten lunchtimes) in a term; and
- any exclusion which would result in the pupil missing a public examination or national curriculum test.

The head teacher must also notify the local authority and governing board once per term of any other exclusions not already notified.

A return to School meeting will be held following the expiry of the fixed term exclusion and this will involve the HT (or, in their absence, the Deputy Head) and other staff where appropriate.

During the course of a fixed term exclusion, the student is at home. Parents are advised that the student is not allowed on the School premises and that daytime supervision is their responsibility as parents/guardians.

Parents may be required to attend a Parenting Programme in order to address ways to support their child's behaviour in school and at home.

The school will take reasonable steps to set and mark work for pupils during the first five school days of an exclusion; and alternative provision must be arranged from the sixth day.

For a fixed-period exclusion of more than five school days, the governing board must arrange suitable full-time education for any pupil of compulsory school age. This provision must begin no later than the sixth school day of the exclusion. Where a child receives consecutive fixed-period exclusions, these are regarded as a cumulative period of exclusion. This means that if a child has more than five consecutive school days of exclusion, then education must be arranged for the sixth school day of exclusion, regardless of whether this is as a result of one fixed-period or more than one fixed-period exclusion.

Permanent Exclusion

The decision to exclude a student permanently is a serious one. There are two main types of situation in which permanent exclusion may be considered:

- The first is a final, formal step in a concerted process for dealing with disciplinary offences following the use of a wide range of other strategies, which have been used without success. It is an acknowledgement that all available strategies have been exhausted and is used as a last resort. This would include persistent and defiant misbehaviour including bullying (which could include racist or homophobic bullying) or repeated possession and/or use of an illegal drug on School premises.
- The second is where there are exceptional circumstances and it is not appropriate to implement other strategies and where it could be appropriate to permanently exclude a student for a first or 'one off' offence. These might include:
 - Serious actual or threatened violence against another student or a member of staff
 - Sexual abuse or assault
 - Supplying an illegal drug
 - Carrying an offensive weapon*
 - Arson

The School will consider police involvement for any of the above offences. These instances are not exhaustive but indicate the severity of such offences and the fact that such behaviour seriously affects the discipline and well being of the School.

** Offensive weapons are defined in the Prevention of Crime Act 1953 as “any article made or adapted for causing injury to the person; or intended by the person having it with him for such use by him.”*

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

The governing body's duty to consider an exclusion

The governing board has a duty to consider parents' representations about an exclusion. The requirements on a governing board to consider an exclusion depend upon a number of factors (these requirements are illustrated by the diagram in Annex A of this policy: A summary of the governing board's duties to review the head teacher's exclusion decision).

The governing board may delegate its functions with respect to the consideration of an exclusion to a designated sub-committee consisting of at least three governors.

The governing board 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 a term; or
- it would result in a pupil missing a public examination or national curriculum test.

The requirements are different for fixed-period exclusions where a pupil would be excluded for more than 5 but less than 15 school days in the term. In this case, if the parents make representations, the governing board must consider within 50 school days of receiving the notice of exclusion whether the excluded pupil should be reinstated. In the absence of any representations from the parents, the governing board is not required to meet and cannot direct the reinstatement of the pupil.

The governing board 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 board must consider any representations made by parents, but it cannot direct reinstatement and is not required to arrange a meeting with parents.

Where the governing board is legally required to consider the reinstatement of an excluded pupil they should:

- not discuss the exclusion with any party outside the meeting;
- 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 SEN);
- where possible, 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 the pupil to be accompanied by a friend or representative (where a pupil under 18 is to be invited as a witness, the governing board should first seek parental consent and invite the parents to accompany their child to the meeting);
- comply with their duty to make reasonable adjustments for people who use the school 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 has an impact 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 their 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 their views by other means if attending the exclusion meeting is not possible.

Where the governing board is legally required to consider reinstating an excluded pupil 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 school.

The governing board must also consider any representations made by or on behalf of:

- parents; and
- the head teacher

When establishing the facts in relation to an exclusion the governing board 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 its consideration, the governing board can either:

- decline to reinstate the pupil; or
- direct reinstatement of the pupil immediately or on a particular date.

Where reinstatement would make no practical difference because for example, the pupil has already returned to school following the expiry of a fixed-period exclusion or the parents make clear they do not want their child reinstated, the governing board

must still consider whether the pupil should be officially reinstated. If it decides against reinstatement of a pupil who has been permanently excluded the parents can request an independent review.

The governing board duty to consider the reinstatement of an excluded pupil

The governing board should identify the steps they will take to ensure all parties will be supported to participate in its consideration and have their views properly heard. This is particularly important where pupils aged under 18 are speaking about their own exclusion or giving evidence to the governing board.

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

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

In reaching a decision on whether or not a pupil should be reinstated, the governing board should consider whether the decision to exclude the pupil was lawful, reasonable and procedurally fair, taking account of the head teacher's legal duties and any evidence that was presented to the governing board in relation to the decision to exclude.

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

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

The governing board's duty to notify relevant parties after its consideration of reinstatement

Where legally required to consider reinstating an excluded pupil, the governing board must notify parents, the head teacher and the local authority of its decision, and the reasons for it, in writing and without delay.

In the case of a permanent exclusion where the governing board decides not to reinstate the pupil, the governing board'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 (i.e. 15 school days from the date on which notice in writing of the governing board's decision is given to parents);
- b) where and 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 SEN are considered to be relevant to the exclusion;
- d) that, regardless of whether the excluded pupil has recognised SEN, parents have a right to require the academy trust to appoint an SEN expert to advise the review panel;
- e) details of the role of the SEN expert; and
- f) that parents may, at their own expense, appoint someone to make written and/or oral representations to the panel;
- g) that, in addition to the right to apply for an independent review panel, if parents believe that there has been unlawful discrimination in relation to the exclusion 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.
- h) that a claim of discrimination under the Equality Act 2010 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).

The governing board may provide the information above by delivering it directly to parents, delivering it to their last known address, or posting it first class to that address. Notice is deemed to have been given on the same day if it is delivered or on the second working day after posting if it is sent by first class mail.

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 its own expense, arrange for an independent review panel hearing to review the decision of the governing board not to reinstate a permanently excluded pupil.

The legal time frame for an application is:

- within 15 school days of notice being given to the parents by the governing board of its decision not to reinstate a permanently excluded pupil; or
- where an application has not been made within this time frame, within 15 school days of the final determination of a claim of discrimination under the Equality Act 2010.

The First-tier Tribunal (Special Educational Needs and Disability) and County Court have the jurisdiction to hear claims of discrimination under the Equality Act 2010 which relate to exclusions. In such circumstances, the Tribunal or Court may decide to delay its consideration until after the independent review panel process has been completed.

Parents may request an independent review panel even if they did not make representations to, or attend, the meeting at which the governing board considered reinstating the pupil.

The school must take reasonable steps to identify a date for the review that all parties, and any SEN expert appointed to give advice in person, are able to attend. However, the review must begin within 15 school days of the day on which the parent's application for a review was made (panels have the power to adjourn a hearing if required).

The composition of the independent review panel will follow DfE guidance, 'Exclusion from Maintained Schools, Academies and Pupil Referral Units in England', Sep 17. No current school governors or staff will be on the panel. A clerk will be appointed for the purposes of the review who will carry out the functions described in the DfE guidance. All panel members and the clerk must have received relevant training for hearing such cases within the last two years.

The role of the independent panel is to review the governing board'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 school.

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'. This means that the panel should accept that something happened if it is more likely that it happened than that it did not happen.

Following its independent review the panel can decide to:

- uphold the governing board's decision;
- recommend that the governing board reconsiders reinstatement; or
- quash the decision and direct that the governing board reconsiders reinstatement.

The panel's decision does not have to be unanimous and can be decided by a majority vote. In the case of a tied vote, the chair has the casting vote.

The independent review panel's decision is binding on the: pupil; parents; governing board; head teacher; and local authority.

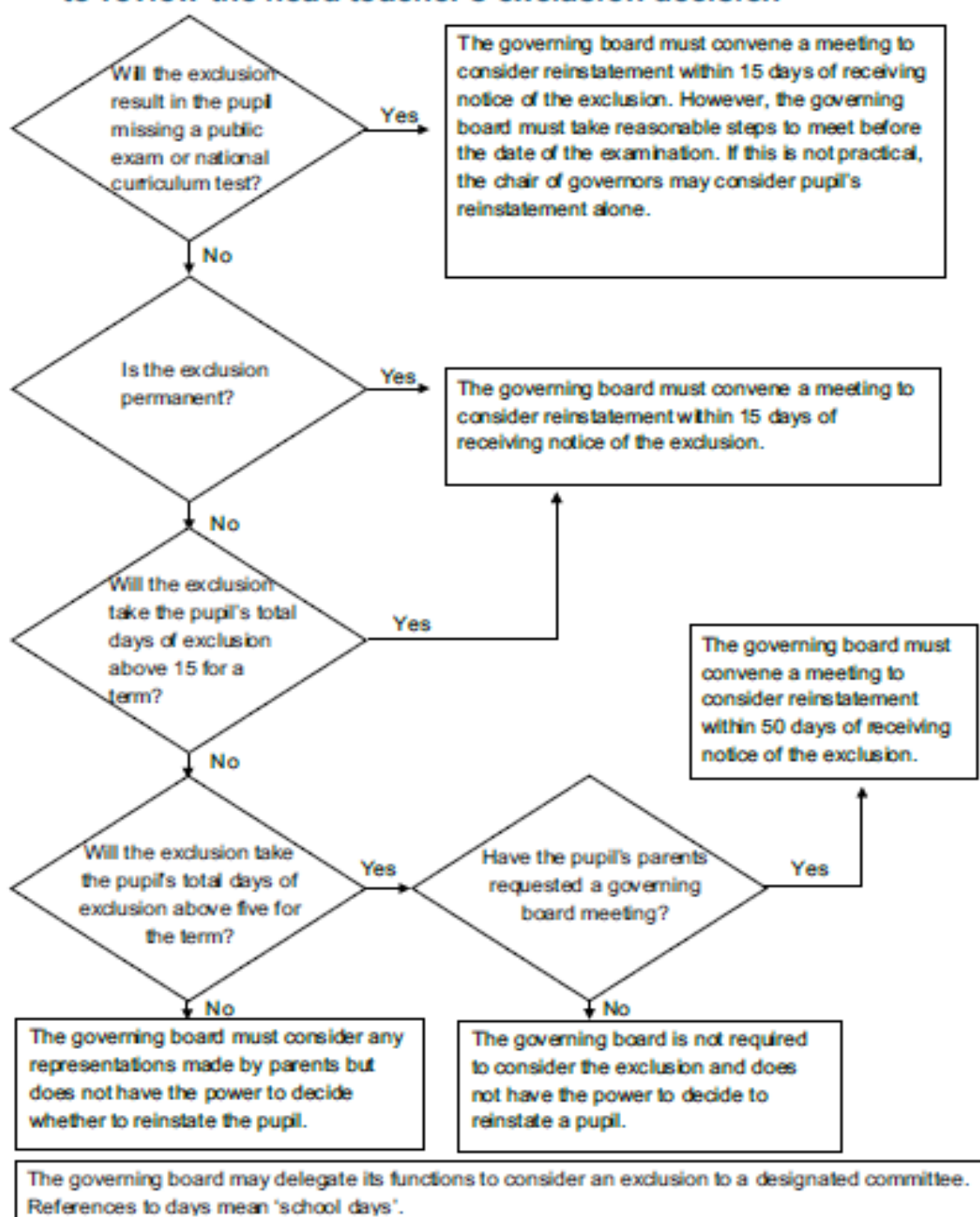
The panel may only quash a governing board's decision if it considers that it was flawed when considered in the light of the principles applicable on an application for judicial review.

Where the panel directs or recommends that the governing board reconsider whether a pupil should be reinstated, the governing board must reconvene to do so within ten

school days of being given notice of the panel's decision. Notice is deemed to have been given on the day of delivery if it is delivered directly or on the second working day after posting if it is sent by first class mail.

It is important that the governing board conscientiously reconsiders whether the pupil should be reinstated, whether the panel has directed or merely recommended it to do so. Whilst the governing board may still reach the same conclusion as it first did, it may face challenge in the courts if it refuses to reinstate the pupil, without strong justification.

Annex A – A summary of the governing board's duties to review the head teacher's exclusion decision



Annex B – Standard Letter to Parent Concerning Permanent Exclusion

The C of E Federated Schools of St Mary's and St. Saviour's

St Mary's

**Brooke Road
Walthamstow
E17 9HJ**

**Telephone: 020 8521
1066
Fax: 020 8521 0756**

St Saviour's

**Verulam Avenue
Walthamstow
E17 8ER**

**Telephone: 020 8520
0612 Fax: 020 8520 7822**



E-mail: school@st-marys-coe.waltham.sch.uk

E-mail: school@st-saviours.waltham.sch.uk

Date

Dear _____,

I regret to inform you of my decision to permanently exclude _____ with effect from _____. This means that _____ will not be allowed in this school again unless he is reinstated by the governing body or an independent review panel.

I realise that this exclusion may well be upsetting for you and your family but the decision to permanently exclude _____ has not been taken lightly. _____ has been permanently excluded because of _____.

You have a duty to ensure that your child is not present in a public place at any time during normal school hours during the first 5 school days of this exclusion, i.e. on _____, unless there is reasonable justification. You could receive a penalty notice if your child is found in a public place during normal school hours on those dates without reasonable justification.

Alternative arrangements for _____ education will continue to be made. For the first five school days of the exclusion we will set work for _____ and would ask you to ensure this work is completed. From the sixth school day of the exclusion onwards – i.e. from _____, the local authority, Waltham Forest will provide suitable full-time education. You will be notified of these arrangements shortly by the LA in a further letter or by phone.

As this is a permanent exclusion, the governing body must meet to consider it. At the review meeting you may make representations to the governing body if you wish and ask them to reinstate your child in school. 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 appeal against their decision to an independent appeal panel. The latest date by which the governing body must meet is _____. If you wish to make representations to the governing body and wish to be accompanied by a friend or representative please contact Tahira Ahmed on 0208 496 1782 at Social Inclusion Team, Summerfield Centre, 99 Leyton Green Rd, Leyton, E10 6DB, Tahira.Ahmed@walthamforest.gov.uk, who can provide advice as soon as possible. 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. Please advise if you have a disability or special needs which would affect your ability to attend the meeting. Also, please inform Tahira Ahmed if it would be helpful for you to have an interpreter present at the meeting.

You may also wish to contact Tahira Ahmed, Exclusions Caseworker for the local authority on 020 8496 1782 who can provide advice about your child's exclusion. You may also find it useful to contact the the Children's Legal Centre. They aim to provide free legal advice and information to parents on state education matters. They can be contacted on 0808 802 008 or on <http://www.childrenslegalcentre.com/>. The advice line is open from 8am to 8pm Monday to Friday, except Bank Holidays and 24th December to the 1st January.

Yours Sincerely

INSERT NAME
Headteacher