

hackney *answers to the making*

Hackney Governors' Conference 2015

School Exclusion - New Guidance and the Role of the Governing Body

Billy Baker
Principal Officer - Pupils out of School

Hackney HASGA hackney learning trust

Aims and Outcomes

At the end of the session attendees will gain a greater understanding of:

- primary legislation & revised statutory guidance,
- the role of the governing body throughout the exclusion process; and
- key policies, practice and alternatives.

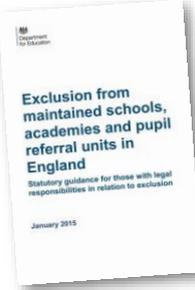
LONDON BOROUGH OF HACKNEY FASCA HACKNEY LEARNING TRUST

What Do You Know?



LONDON BOROUGH OF HACKNEY FASCA HACKNEY LEARNING TRUST

Revised Guidance 2015



- Applies to all exclusions from 5th January 2015
- Subtle yet significant changes
- Gives greater confidence to Headteachers on their use of exclusion
- Amendments made to 6th day provision
- Provides greater clarity or further confusion for governing bodies?

LONDON BOROUGH OF HACKNEY FASCA HACKNEY LEARNING TRUST

The Mechanics of an Exclusion



What should every governor know?

LONDON BOROUGH OF HACKNEY FASCA HACKNEY LEARNING TRUST

Behaviour Policy

What do you say and when did you say it?

- The school's behaviour policy must be published on its website, if not GB responsible.
- Ensure absolute clarity about the expected standard of pupils' behaviour. Should include the governing body's behaviour principles. DfE provides examples, including:
 - screening, searching and confiscation,
 - behaviour beyond the school gate; and
 - when to work with other local agencies to assess the needs of pupils who display persistent disruptive behaviour.
- Ensure that behaviour the policy is clearly understood by all staff, parents and pupils.

LONDON BOROUGH OF HACKNEY FASCA HACKNEY LEARNING TRUST

Early Intervention

- Allocation of a key worker such as Learning Mentor or Teaching Assistant
- Pastoral Support Plan (PSP), IEP or equivalent
- Support from local services such as Young Hackney Re-engagement Unit
- **Short-term placement at an alternative provider**
- Multi-agency assessment which may pick up unidentified needs
- Managed Move
- Consider whether an assessment of SEN is needed

LONDON BOROUGH OF HACKNEY

FASCA

HACKNEY LEARNING TRUST

The Power to Exclude

- **Only the Headteacher of the school can exclude**
- **Fixed Term Exclusions**
 - Up to a maximum of 45 days in a single academic year
- **Lunchtime exclusions**
 - Counted as half a school day
- **Permanent Exclusions**
 - In response to a serious breach, or persistent breaches, of the school's behaviour policy; **or**
 - Where a pupil's behaviour means allowing the pupil to remain in school would be **detrimental** to the education or welfare of the pupil or others in the school."

Informal exclusions for "cooling off" are not allowed!

LONDON BOROUGH OF HACKNEY

FASCA

HACKNEY LEARNING TRUST

NEW

Day 6 Provision

NEW

- **Fixed Term Exclusions**
 - Governing body must arrange suitable full-time education from day 6 of any FT exclusion
 - This is now triggered by consecutive fixed period exclusions
"...education must be arranged for the sixth school day of exclusion regardless of whether this is as a result of more than one fixed period exclusion." (para 41)
- **Permanent Exclusions**
 - Local Authority must arrange provision from day 6

LONDON BOROUGH OF HACKNEY

FASCA

HACKNEY LEARNING TRUST

Informing the Governing Body

The Headteacher must, without delay, notify the governing body and the Local Authority of:

- a permanent exclusion,
- exclusions which would result in the pupil being excluded for more than five school days in a term; and
- exclusions which would result in the pupil missing a public examination or national curriculum test.
- for all other exclusions the Headteacher must notify the governing body and Local Authority once a term

LONDON BOROUGH OF HACKNEY

FASCA

HACKNEY LEARNING TRUST

Frequently Asked Questions

- **Can a Headteacher withdraw an exclusion?**
 - Yes; the headteacher may withdraw an exclusion that has not been reviewed by the governing body
- **Can a Headteacher convert a fixed term exclusion into a permanent?**
 - Yes; usually where further evidence has come to light
- **What about parallel criminal proceedings?**
 - The HT need not postpone taking a decision to exclude
 - Where GB is required to consider a Headteacher's decision during criminal proceedings, they cannot postpone the meeting
 - Must make any decision (only on the evidence available) based on *'balance of probabilities'*

LONDON BOROUGH OF HACKNEY

FASCA

HACKNEY LEARNING TRUST

The Decision Making Process

- When establishing the facts in relation to an exclusion decision the Headteacher and 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'*.



LONDON BOROUGH OF HACKNEY

FASCA

HACKNEY LEARNING TRUST

The Governing Body & The Pupil Discipline Committee



LONDON BOROUGH OF HACKNEY

FASCA

HACKNEY LEARNING TRUST

Consideration of an Exclusion

Type of Exclusion	Governing Body Response
Permanent	Meeting held (PDC) within 15 school days regardless of parental request
15+ Days	Meeting held (PDC) within 15 school days regardless of parental request
6 – 15 Days	Only at parental request and Within 50 school days
- 5 Days	Only at parental request but no meeting necessary, however, the GB must still consider the exclusion
Pupil will miss a public examination or test	Prior to the test (These are the only circumstances in which a chair can review alone)

LONDON BOROUGH OF HACKNEY

FASCA

HACKNEY LEARNING TRUST

Pupil Discipline Committee

Composition of the PDC

- **Governing Body**
minimum of 3, must be impartial and follow the rules of natural justice
- **The Parents,**
must be invited and allowed to bring a friend and representative
- **The pupil**
Should be encouraged to speak
- **Headteacher**
outlines case for exclusion
- **The Local Authority**
must be permitted to make statement for a maintained school or PRU
- **The Clerk**
usually arranges hearing and can provide advice to the governing body on procedure

LONDON BOROUGH OF HACKNEY

FASCA

HACKNEY LEARNING TRUST

- **What can the PDC do?**
 - Uphold the exclusion; or
 - Direct reinstatement immediately or by a given date.
- **Reaching a decision**
 - Must consider interests of the pupil but equally have regard to others in the school
 - Apply the civil standard of proof

NEW

Principles of public law

"Public law principles underpin good decision-making. All decisions of a governing body must be made having regard to public law principles. Panels are expected to understand the law that is relevant to exclusions and the principles that apply."
(para 152)

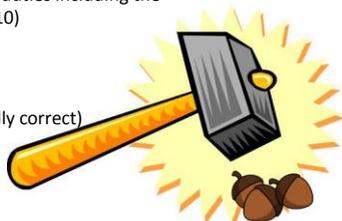
LONDON BOROUGH OF HACKNEY

FASCA

HACKNEY LEARNING TRUST

Public Law Principles Apply to Exclusions

- Must be lawful (legislation on exclusions and wider legal duties including the Equality Act 2010)
- Rational
- Reasonable
- Fair (procedurally correct)
- Proportionate



LONDON BOROUGH OF HACKNEY

FASCA

HACKNEY LEARNING TRUST

Rules of Natural Justice

- Rule against bias and the right to a fair hearing
- Possible problem areas:
 - Talking to one of the parties in the absence of the other
 - One of the parties being alone with the Panel
 - Body language
 - Drifting off – having to be elsewhere/falling asleep
 - Asking inappropriate questions

"What is wrong with the Headteachers approach, If I were the Head I would have excluded you a long time ago!"
Essential that no outsider could consider there was any unfairness or bias

LONDON BOROUGH OF HACKNEY

FASCA

HACKNEY LEARNING TRUST

Documentation Check List for the PDC

a)	The Headteacher's permanent exclusion and or fixed term exclusion letters to the parent	✓
b)	The school's witness statements/evidence which led to the decision to exclude for a fixed term or permanently	✓
c)	The pupil's statement and account of events	✓
d)	The pupil's behaviour or incident log	✓
e)	Any policies or documents that the Governing Body are required to have regard to in making their decision, such as; <i>SEN Policy, exclusion policy, anti-bullying policy</i>	✓
f)	The school's published behaviour policy	✓
g)	History of support interventions, if appropriate	✓
h)	Any other relevant papers/evidence/information that supports the school's case	✓

LONDON BOROUGH OF HACKNEY

FASCA

HACKNEY LEARNING TRUST

The Governing Body's Checklist

a)	Read the papers thoroughly and make notes of questions for clarification/initial thoughts.	✓
b)	Ensure that the incident(s) have been investigated appropriately	✓
c)	Ensure that a statement from the pupil has been included in the pack	✓
d)	Has the behaviour been detrimental to the education or welfare of the pupil or others within the school?	✓
e)	Does the behaviour correlate to the school's published behaviour policy?	✓
f)	Consider whether the pupil was aware of the behaviour policy and expectations placed on them by the school	✓
g)	Address whether support strategies have been pursued by the school	✓
h)	Look at whether the pupil has Special Educational Needs, and address whether these needs have been appropriately met?	✓
i)	Look at whether there are any mitigating factors that may have contributed to the pupil's poor behaviour	✓
j)	The pupil has been excluded for a disciplinary reason	✓

LONDON BOROUGH OF HACKNEY

FASCA

HACKNEY LEARNING TRUST

Notification of the PDC's decision

- **PDC must provide written notification of their decision, without delay, to:**
 - parents
 - Headteacher; and
 - local authority.
- **GB should set out the reasons for its decision in sufficient detail to enable all parties to understand why the decision was made.**
- **Outline information regarding how to appeal to an IRP and the role of the SEN expert. This must include**
 - How parents can request an IRP and the deadline
 - That, in addition to the right to request an IRP; parents may bring discrimination claim to FTT or to the County Court.



LONDON BOROUGH OF HACKNEY

FASCA

HACKNEY LEARNING TRUST

The Independent Review Panel

- You may be requested to attend an IRP
 - IRP will review a decision in light of the principles applicable in an application for judicial review
 - Illegality, irrationality and procedural impropriety
- IRP has the power to:
 - **Quash** the decision & direct that the GB considers the exclusion,
 - **Recommend** that the GB reconsider their decision; or
 - **Uphold** the original decision.

LONDON BOROUGH OF HACKNEY

FASCA

HACKNEY LEARNING TRUST

Alternative Provision

- Very common for a Headteacher to place a child in alternative provision
- Parental consent no longer required, GB can direct rather than request a child attend
- However, governing body must:
 - ensure that parents (and the local authority where the pupil has a EHCP) are given clear information about the placement: why, when, where, and how it will be reviewed; and
 - keep the placement under review and involve parents in the review
- Alternative provision should be good quality, registered (where appropriate), and delivered by high quality staff with suitable training, experience and safeguarding mechanisms in place.

LONDON BOROUGH OF HACKNEY

FASCA

HACKNEY LEARNING TRUST

Further Training

- Recommend that all governing bodies are trained, especially those that will sit on a PDC
- Regular training delivered throughout the year but HLT Exclusion team but will provide free bespoke training to all. This will cover in further detail:
 - The mechanics of exclusion
 - The role of the governing body
 - Independent Review Panels
 - Key legislation, including the Equality Act 2010 and the Human Rights Act.

LONDON BOROUGH OF HACKNEY

FASCA

HACKNEY LEARNING TRUST

Contact Details

- All Hackney schools, Academies and PRUs should seek advice prior to and/or after an exclusion from the HLT Exclusion Team
- Governors, clerks and IRP members can also seek advice and resources from the Exclusions Team
- We can be contacted on 0208 820 7279 or via email to: exclusions@learningtrust.co.uk

Questions

