Guidance for those at risk of Exclusion – for Children and Young People with Special Educational Needs and Disabilities.

May 2017
Introduction

This document seeks to provide clarity to Schools with respect to the exclusions process and how this relates to pupils with Special Educational Needs and Disabilities (SEND). It is predicated on the aspiration that no pupil with identified special educational needs and disabilities (including those who have and Education, Health and Care Plan and those on SEN Support) will be excluded. It will clarify responsibilities regarding services provided by Hackney Learning Trust (HLT) that should be approached by schools when concerns regarding pupils with SEND become apparent.

A key principle in providing educational provision to pupils with SEND is an understanding that there may be a higher degree of challenging and/or difficult behaviour displayed. Consequently there is an expectation that schools will take account of this and make reasonable adjustments (as required under the SEND Code of Practice, 2015) when applying their behaviour management policies. It is recognised that the notion of a ‘one size fits all’ policy is not an appropriate response for children and young people who have identified special educational needs and (or) disabilities.

Hackney Learning Trust Strategy to reduce exclusions

Our vision is for all children and young people in Hackney to be included and purposefully engaged in an educational programme appropriate to their needs and age. We want our children and young people to flourish and minimal school exclusions will be key indicator of our collective success.

Our strategy to deliver this vision is to promote an ethos of positive social and emotional wellbeing by settings having access to a range of evidence-based approaches so there is ‘no need to exclude’. We want to work towards the position where the needs of all young people are addressed and where schools no longer feel the need to exclude given the continuum of provision and support available to them to meet pupil needs. This is encompassed within our ‘No Need to Exclude’ strategy -

https://www.learningtrust.co.uk/TPG/PFS/Pages/NoNeedtoExclude.aspx

This involves:

- publicising and disseminating the vision of inclusion and strategy as widely and frequently as possible
- engaging schools in regular dialogue – formally and informally
- ensuring the teams involved are proactive and skilled
- ensuring LA services speak with one voice and deliver a consistent message
- explicitly recognising that managing challenging behaviour is not just a school issue
- facilitating involvement and support of other agencies
- communicating the need for, and value of, early intervention
- providing schools with agreed processes and procedures
- encouraging schools to share good practice
- publishing and sharing data and case studies as exemplars for critical learning
- challenging schools on process and procedures, in and out of borough
- encouraging schools to review the efficacy of their approaches and interventions

For all of the above, HLT accepts that this is a collective organisational responsibility.
Head teachers' duties

Only the Head teacher (or, in the absence of the Head teacher, the acting Head teacher or teacher in charge) can exclude a pupil. All exclusions must be on disciplinary grounds and in accordance with the school’s published behaviour policy.

Head teachers and governing bodies must take account of their statutory duties in relation to special educational needs when administering the exclusion process. This includes having regard to the SEND Code of Practice 2015.

When establishing the facts, 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. It is further advised that, when considering exclusion as a response to pupil behaviour, that evidence regarding the nature and degree of support that has been provided is evaluated.

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

- in response to a serious or persistent breaches of the school's behaviour policy; and
- where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.

Local Authority expectations

If a child or young person has special needs, a careful analysis of how these needs are being met will be necessary if the child or young person displays ‘challenging’ behaviour. Challenging behaviour is an indicator that needs are not being met. Consequently, schools are expected to implement early intervention strategies with children and young people who may display challenges, in order to develop manage and support a child or young person’s needs. It is essential that early, effective, evidence-based interventions are considered, implemented, monitored and reviewed and modified in response to the challenging behaviour, prior to any decision that relates to an exclusion of any form.

“Schools should also consider whether continuing disruptive behaviour might be the result of unmet educational or other needs. At this point, the school should consider whether a multiagency assessment is necessary” (DfE 2016, p. 7).


For cases where children and young people have EHC Plans and present significant challenges in schools and there is concern that needs are not being met through the assess, plan, do and review cycle, schools should arrange an Emergency Annual Review (EAR) of needs and invite professionals as part of this process. HLT would expect that this takes place as a matter of due process, and before any decisions are reached and agreed in regard to exclusion based on the EAR outcomes meeting.
**Funding**

It is important for schools to be aware that for any pupil who is permanently excluded, HLT will reclaim the pro-rata amount of the Core Pupil Funding for the remaining period of that academic year.

Aligned with this, if any child or young person with an EHC Plan is permanently excluded, HLT will claim the pro-rata funding attached to the EHC Plan.

Similarly, if any child or young person with an EHC Plan is excluded and was not accessing a full time timetable at the point of exclusion, the excluding school will need to demonstrate how the allocated SEN funding and resource was being used if the child or young person was not accessing full time provision. A proportion of the funding may be clawed back if it was not used for the child or young person.

Schools should use good quality and best practice inclusive teaching and support interventions. They should be proactive and responsive to the identification of individuals or groups and develop effective whole school provision management.

Schools should consider how funding is used to support children and young people including those at risk of exclusion. Schools must demonstrate that a range of evidence-based approaches have been implemented and reviewed and relevant agencies such as the Educational Psychology Team or Re-engagement Unit have been consulted.

**Contacts**

**At the early stages of a concern**

Where schools have concerns about meeting the needs of a child or young person, then at early stages of the concern:

Primary schools can contact: The Educational Psychology Service
Specialist teachers in the Inclusion team
The Re-engagement Unit
The EHC Planning Team

Secondary schools can contact: The Educational Psychology Service
Specialist teachers in the Inclusion team
The EHC Planning Team

**Where an exclusion is being considered**

Where schools have significant concerns about meeting the needs of a child and young person, and the school considers the child or young person to be at risk of exclusion, then the following action should be taken:

1. School makes contact with the HLT Exclusions Team for advice and guidance.
   [Exclusions@learningtrust.co.uk](mailto:Exclusions@learningtrust.co.uk)

2. Exclusions Officer takes full details of child or young person - demographic details, whether known to other services such as Re-engagement Unit, Children’s Social Care, CAMHS, Educational Psychology Service, Young Hackney etc.

3. Exclusions Officer ascertains concerns in regard to the behaviour that is causing concern, and at this point verifies whether child is subject to EHC needs assessment, has an EHC Plan or a Statement of SEN.
If the pupil does not have an EHC Plan, the school should involve the Re-engagement Unit or the Educational Psychology Team so that appropriate support can be provided.

Contact Nicky Pailing, Re-engagement Unit Manager - 0208 820 7091 – nicky.pailing@learningtrust.co.uk. Or Helen Grice, REU Business Manager – 0208 820 7418 Helen.Grice@learningtrust.co.uk. Educational Psychologists – epsadmin@learningtrust.co.uk. Education Health Care Planning Team - SEND.Admin@learningtrust.co.uk.

4. Exclusions Officer / REU Officer offers advice to school based on level of concern, severity of behaviour, whether exclusion proposed is fixed term or permanent, and whether an alternative is possible i.e. a Permanent Exclusion (PEX) can be converted to Fixed Term Exclusion (FTE) whilst HLT EHCP Plan Co-ordinators consider other options. Schools should also be directed to the ‘No Need to Exclude’ document and be asked to consider how they have used this to support their approaches and understanding of the pupil’s behaviour.

5. If the Exclusion Officer identifies a child or young person with SEND, then the Exclusions Officer / REU Officer will refer to the Plan Co-ordinator in the EHC Planning team, to enable them to co-ordinate and lead on a response to the school which will typically involve an emergency annual review. It may be appropriate and necessary to involve the Educational Psychology Team at this point and, as such, a request should be made to that team, either by the school or EHCP Team.

6. Plan Co-ordinator contacts school and has further discussion about the concerns and provides guidance.

7. Plan Co-ordinator liaises with Exclusions Officer / REU Officer on options that may be available and applicable.

8. The Plan Co-ordinator will work jointly with relevant agencies and parents on the content of the Plan. Consideration should also be given to informing parents/carers of the support that is available from the SEND Information, Advice and Guidance Service.
Summary of process

**Primary**
School makes contact with Re-engagement unit (REU)

Exclusion Team/REU takes full details of pupil

**Secondary**
School makes contact with HLT Exclusion Team

HLT Exclusion Team/REU records concerns around behaviour and verifies whether the pupil is subject to assessment, has EHCP

HLT Exclusion Team/REU offer advice to school including consideration of alternatives

**Child has EHCP or Statement**

- HLT Exclusion Team/REU will refer to Plan Coordinator in EHC Planning Team, who on notification will liaise with the school
- Plan Co-ordinator contacts school for further discussion
- Plan Coordinator may discuss further with HLT Exclusion Team/REU around procedure
- EHC Planning Team Plan Co-ordinator work jointly with relevant agencies and parents on the content of the Plan.

**No EHCP or Statement**

- HLT Exclusion Team/REU continue to work with school, family and other professionals with intended outcome of avoiding exclusion. The Educational Psychology Team should also be considered to support inclusion.

When a SENCO or School contacts the EHC Planning Team in the first instance, they will be directed to follow this process.
Joint working with the EHC Planning Team

Upon receipt of information and concerns from Schools, the Exclusions Team / Re-engagement Unit will offer initial advice and guidance to the school to manage the immediacy of the presenting situation. This may involve implementing a fixed term exclusion to allow sufficient space for planning to meet the child or young person’s needs or for the Emergency Annual Review to be arranged. The Exclusions Team will review decisions that are not believed to be in the best interests of the child or young person and consult with the EHC Planning team who will identify and look for alternative solutions. It is imperative that up to date and accurate information about the pupil is shared by all teams. This should include:-

- the presenting needs of the pupil;
- their strengths;
- outline of the strategies/approaches/interventions that have been implemented and the outcome of such,
- information on current and previous exclusions

The EHC Planning Team will assume responsibility for case management. This will involve:-

- Discussion with the Exclusions Team and Re-engagement Unit on school’s concerns, strategies to address behaviour and agreed actions thus far.
- Liaison with Schools to discuss pupil behaviour and to arrange an emergency annual review if that has not already taken place.
- Liaison with parents in regard to their views, wishes, feelings and preference.
- Assessment and consideration of current needs and challenges, and how these can be met and addressed going forward in order to avert further exclusion.
- In certain cases the EHC Planning Team will liaise with the Inclusion and Specialist Support Team as appropriate.

The Plan Coordinator will be the initial point of contact, and will be supported by the Area Coordinator.

Exclusion team

HLT Exclusions Service is staffed by experienced and committed officers who will support schools with strategies and interventions to avoid exclusions, and challenge any schools that do not adhere to the DfE and HLT guidance. This service has developed clear procedures and guidance around Exclusions, Pupil Disciplinary Committees and Independent Review Panels – many other Local Authorities are less proactive.

Head teachers and Principals attending the July 2015 Behaviour and Attendance Partnership meeting commented on the invaluable support received from the Exclusions Officers within HLT. The primary focus of this service is to work to reduce exclusions and to ensure positive outcomes, and continuity of education for pupils who present with challenging behaviour.

It is important to note that the Exclusions Service upholds every aspect of the DfE guidance, and also strives to ensure that all educational establishments provide accurate and timely data in regard to fixed term and permanent exclusions. Where this may not happen, direct challenge to schools will follow.

REU

The Re-engagement Unit (REU) supports primary schools to create a clear, practical plan to promote the inclusion of a child at risk of exclusion. The REU works within school systems and in partnership with the teaching staff, SLT and families. The REU accepts referrals from all Hackney maintained primary schools and offers a highly personalised, responsive service. The REU should be approached
for advice and guidance on inclusion systems and strategies for all primary children who are at risk of fixed term or permanent exclusion. The REU works best as a preventative service so early referral is advised. The Exclusions Team and the Re-engagement Unit will work collaboratively in regard to the advice, guidance and interventions that are provided to a school. Information on pupils who may be at risk of exclusion will be regularly shared between services.

**EPS**

The Educational Psychology Service (EPS) works with primary, secondary and special schools to support them in meeting the needs of children and young people with a wide range of needs, including those at risk of exclusion. Such work can be at the level of the individual, but also at the level of the school to support the promotion of inclusive practice. The EPS adopts a collaborative approach, working closely with schools and parents/carers to ensure that an understanding of the young person’s needs is established and a clear, evidence-based plan agreed that is aimed at promoting the inclusion of the young person. In addition, the EPS can also provide direct support to young people, where it has been identified and agreed by parents/carers and school that this type of support would be valuable, as part of an overall plan to support the young person. Work undertaken by the EPS would be regularly reviewed, in partnership with parents/carers and school, so that support can be tailored to meet the needs of the young person, as they change.

**EHCP team**

In regard to Emergency Annual Reviews, the EHC Planning Team will liaise with the school and agree who would be best to chair the meeting. HLT will work to ensure that the plan and intentions to address the current challenges are clearly understood by schools, parents and other professionals at the Emergency Annual Review meeting.

The options for pupils with EHCPs may be as follows:-

- The Emergency Annual Review would explore what the existing school can do in addition to, or different from, what they are already doing.

- Alternative Provision via New Regent’s College (NRC) – staff at NRC will liaise with the EHC Planning Team in regard to the needs that the child presents and how these can be met. Schools must notify EHCP team of such arrangements – this is a legal requirement specified in the DfE Alternative Provision Guidance (paragraph 24) [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/268940/alternative_provision_statutory_guidance_pdf_version.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/268940/alternative_provision_statutory_guidance_pdf_version.pdf)

- Consider consulting other providers, informed by parental preference. Within this, HLT acknowledges that delays cannot be in the best interests of the child so whilst we respect parental preference, decisions on suitable placements may need to be informed by availability of appropriate resource that is determined a suitable to need.

It may be take a considerable time before a resolution / placement is identified. During that period, the child remains on the roll of the host school who retain responsibility, although the child may be dual registered at NRC or a provider commissioned through NRC only after agreement with the EHC Planning team.

Timescales and pathways are essential in ensuring that cases do not drift and needs remain unmet. Area Co-ordinators will retain responsibility for agreeing timescales and ensuring that these are adhered to.
The consultation process will include matters relating to the Exclusion. In dialogue with a potential new school, The EHC Planning Team officers will ensure that the receiving schools are fully briefed in regard to the pupil's needs and issues including exclusion if that has taken place.
Appendix

Exclusions Guidance

General

- Only the Head teacher can exclude a pupil. All exclusions must be on disciplinary grounds.
- Exclusion can either be a fixed term exclusion (one or more fixed periods up to a maximum of 45 school days in a single academic year) or a permanent exclusion.
- The behaviour of a pupil outside school can be considered as grounds for exclusion.
- Informal or unofficial exclusions, such as sending pupils home to cool off are unlawful, regardless of whether they occur with the agreement of the parents or carers.

Pupils with SEND

- DfE guidance on exclusions from maintained schools, para 22 states that schools should as far as possible avoid permanently excluding students with an EHC Plan. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269681/Exclusion_from_maintained_schools_academies_and_pupil_referral_units.pdf
- Schools should have followed the assess – plan - do – review cycle and sought advice from services identified in the No Need to Exclude strategy to ensure that adequate support has been implemented to meet the child or young person’s SEND.
- Where a school reaches the view that a student with additional needs or an EHCP is in danger of permanent exclusion, the school should initiate an Emergency Annual Review. HLT suggests that the Educational Psychologist, EHC Plan Coordinator, as well as any other relevant professional working with the child, are in attendance.
- Where a school has concerns about the behaviour, or risk of exclusion, of a child with additional needs or an EHCP it should, in partnership with others (including the local authority), consider what additional support or alternative placement may be required.
- HLT will advise, where a student with an EHCP receives a permanent exclusion, the Head teacher should use the time between the imposition of the exclusion and the meeting of the Pupil Discipline Committee to hold an Emergency Annual Review. If the terms of the EHCP have not been fully met and there are still strategies the school needs to put in place, it would be expected that the Head teacher would withdraw the exclusion. The meeting could also recommend a change of placement or mainstream school and agree interim support and timescales.
- 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 school feels it is unable to meet.
- Head teachers and governing bodies must take account of their statutory duties in relation to special educational needs (SEND) when administering the exclusion process. This includes having regard to the SEN Code of Practice 2015.
- Schools have a duty under the Equality Act 2010 not to discriminate against pupils by excluding them from school because of behaviour caused by their disability.
Discrimination is seen as occurring where a disabled pupil is treated less favourably than other pupils for a reason relating to their disability, without justification. Discrimination can also occur where a school fails to make reasonable adjustments to ensure that disabled pupils are sufficiently and appropriately supported.

**Educational provision following an Exclusion**

- For a fixed period exclusion of more than five school days, the governing body (or LA in relation to a pupil excluded from a PRU) must arrange suitable fulltime education. This provision must begin no later than the sixth day of the exclusion. HLT would encourage all schools to broker such provision via New Regents College, however, HLT has no authority to insist such a referral is made. For fixed term exclusions the school cover any costs.

- For permanent exclusions, HLT must arrange suitable full-time education for a Hackney resident to begin no later than the sixth day of the exclusion. In addition, where a pupil has a statement or EHCP, HLT must ensure that an appropriate full-time placement is identified in consultation with the parents (who retain their rights to express a preference for a school that they wish their child to attend). For permanent exclusions, HLT cover the cost of provision via New Regent College – that is, it may be agreed that another provider (within NRC Provider Framework) is better suited to offer the provision. In such instances NRC will oversee and hold responsibility for the placement.