



EXCLUSIONS POLICY

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● **Statement of intent**

Malden Oaks does not believe excluding its students is in their best interests.

At Malden Oaks, we understand that a safe, calm and purposeful learning environment is essential for promoting a high quality education. Unconditional care and respect underpin everything that we do. We see behaviour as a form of communication and hold the following values at the core of our practise and at the forefront of our minds when considering a student's behaviour:

● **Growth Mindset**

We have no fixed ideas about student potential
Every day is a fresh start
We have high expectations of all of our students

● **Learning from example**

We model communication behaviour for the students

● **Language matters**

We talk about what students can do.
We focus on needs and we avoid judgemental language.
We describe the behaviour and not the student.
For example, we talk about students being unable to engage in a lesson rather than refusing to engage in a lesson.
We talk about students experiencing difficulty doing XYZ rather than choosing not to
We talk about the behaviours we see rather than passing judgement on a student's character

● **The 4 As Programme**

We give students frequent exposure to the following opportunities in order to build resilience and positive learning behaviours:

Altruism- helping others

Autonomy- feeling in control of our own choices

Achievement- feeling a sense of satisfaction at having overcome a challenge or succeeding at something

Attachment- feeling like you belong to a group

● **Awards not Rewards**

Awards are made after the event.

They are given to recognise and celebrate success and achievement.

- **Unwanted behaviour happens when students have unmet needs**

Our approach to all incidents or ongoing concerns is to examine the underlying needs of the student and to explore all possible options to better meet these needs

We want students to leave us at the end of their placement able to make the right choices and to take responsibility for their actions. This means that they need to take charge of their own behaviour, not rely on externally imposed controls. We recognise and understand that everyone makes mistakes but we ensure that every day is a fresh start, with high expectations of what can be achieved on that day. We do not carry difficulties forward. We aim to establish and maintain positive relationships between all members of our community, so that there is an adult, purposeful atmosphere.

We recognise that the needs of students attending Malden Oaks may present as challenging behaviour, which we consider to be a form of communication. For this reason, we do not believe that excluding students attending Malden Oaks is right for them at this time in their educational journey. We will always seek to make alterations to our provision to ensure that the needs of the student can and are met and this might involve changes to the type of provision offered or the location of the provision. We also acknowledge that our students have often experienced a sense of rejection from other schools and we do not seek to reinforce the low self esteem they may experience as a result of this.

The most recently available national data evidences that our approach is in stark contrast to the norm for AP. The average suspension exclusion rates for alternative provision were **57.94** in 2018 and **191.09** in 2019. No AP data is available for 2020, but for special schools the rate was **7.76**. In the same period Malden Oaks' suspension rate was **2.0** in both 2018 and 2019 and has been **0** since adopting this new exclusions policy from 2020 onwards.

[The suspension exclusion rate is calculated as **the total number of suspensions, divided by the total number of pupils (x100)**. For example, in 2019 on average, an AI with 100 students, lost 191 days through suspensions over the year]

In the highly unlikely event that a suspension or exclusion was considered in the best interests of the student, the following policy will be adhered to in line with guidelines from the Department for Education and the Equalities Act 2010:

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

The school has created this policy to clearly define the legal responsibilities of the headteacher, Management Committee and LA when responding to student exclusions, to ensure that they are dealt with both fairly and lawfully, and in line with DfE statutory guidance.

1.Malden Oaks Ethos

1.1 Malden Oaks views all behaviours as a communication and recognises that its students have often had traumatic experiences in their educational journey and consequently do not believe that suspending or excluding students is in their best interests.

1.2 All staff are attachment aware and trauma informed and receive regular training to best meet the needs of their students.

1.3 Students are provided with personalised timetables, playing to their strengths, interests and aspirations. At KS3 Surbiton, students are placed with one key teacher to encourage positive relationship building with adults and peers over the course of the day. They are taught in small groups (no more than 5) to build a sense of belonging and consistency. At KS4 DC & 6Oaks, students are placed in a small tutor group (no more than 8). Their tutor will build a positive relationship with them and will model positive interactions. This is achieved through the daily tutor time and, for year 11, the weekly 1:1 mentoring sessions. The tutor will develop a thorough understanding of each student's specific strengths and needs. The academic curriculum is taught by subject specialists, again in small groups, thus enabling a deep understanding of each student's profile. Within the tuition part of our provision, students participate in 1:1 or 1:2 programmes that are designed to promote positive engagement.

1.4 Malden Oaks offers students a fresh start and the opportunity to rebuild their trust in education and the professionals included in these settings. They are encouraged to believe in themselves and what they can achieve, something they may be lacking from negative experiences over the years in their personal and/ or academic lives.

1.5 Students are encouraged to work within our vision of the 4As (Attachment, Autonomy, Altruism and Achievement) in order to understand that they are important and what they do and the choices they are able to make will positively impact their own lives and the lives of others close to them.

As detailed above, Malden Oaks seeks to consistently find alternatives to exclusions. In exceptional circumstances, if a suspension or exclusion was required, the legal framework would be followed and this can be found in Appendix 1.

Appendix 1

● Legal framework

This policy has due regard to the related statutory legislation including, but not limited to, the following:

- The Education Act 2002
- The School Discipline (Student Exclusions and Reviews) (England) Regulations 2012
- The Education and Inspections Act 2006
- The Education Act 1996
- The Education (Provision of Full-Time Education for Excluded Students) (England) Regulations 2007
- The European Convention on Human Rights (ECHR)
- The Equality Act 2010

This policy also has due regard to statutory and non-statutory guidance, including, but not limited to, the following:

- DfE (2017) 'Exclusion from maintained schools, academies and student referral units in England'
- DfE (2016) 'Behaviour and discipline in schools'
- DfE (2015) 'Special educational needs and disability code of practice: 0 to 25 years'
- DfE (2018) 'Mental health and behaviour in schools'

This policy will be implemented in conjunction with the following school policies and procedures:

- Behaviour and Anti-Bullying Policy
- Behaviour Principles
- Special Educational Needs and Disability (SEND) Report
- Safeguarding Children in Education in Policy

Temporary procedures due to covid as advised on gov.uk

All suspensions and permanent exclusions occurring between 25 September 2021 and 24 March 2022 (inclusive of those dates) are subject to temporary arrangements with regards to the use of remote access technology (for example, videoconferencing or telephone conferencing software) for meetings of governing boards or independent review panels. This is a contingency measure should there be any further public health restrictions to limit the spread of COVID-19 that might make it difficult for meetings to be held in person within the normal statutory timescales.

Governing boards and independent review panels (IRPs) who have a duty to meet to discuss a suspension or permanent exclusion that occurs between 25 September 2021 and 24 March 2022 (inclusive), must ensure that any such meeting takes place within the normal statutory timescales described in the statutory guidance Suspensions and permanent exclusions from maintained schools, academies and pupil referral units in England.

If the deadlines are missed because of COVID-19, the meeting must be held as soon as it becomes reasonably practicable to meet either in person or via remote access (respecting the conditions for such a meeting).

If the deadlines are missed because of COVID-19, the meeting must be held as soon as it becomes reasonably practicable to meet either in person or via remote access (respecting the conditions for such a meeting).

Governing boards and IRPs should:

- facilitate remote access meetings where it is not reasonably practicable to meet in person
- consider the actions for schools during the coronavirus (COVID-19) outbreak

A permanent exclusion should be taken as having 'occurred' on the first day of the permanent exclusion.

Any permanent exclusion covered by these arrangements will continue to be subject to them until the procedures for scrutiny of the permanent exclusion have been exhausted.

For any suspension or permanent exclusion that occurred between 25 September 2020 and 24 September 2021, the above also applies.

Conducting remote meetings

For suspensions and permanent exclusions occurring between 25 September 2021 and 24 March 2022 (inclusive of those dates), meetings of governing boards or IRPs should be held via remote access if:

- it is not reasonably practicable for the meeting to take place in person, within the usual timescales, due to COVID-19 and the governing board, or arranging authority for IRPs, is satisfied that:
 - all the participants agree to the use of remote access
 - all the participants have access to the technology which will allow them to hear and speak throughout the meeting, and to see and be seen, if a live video link is used
 - all the participants will be able to put across their point of view or fulfil their function
 - the meeting can be held fairly and transparently via remote access

The governing board, or arranging authority for IRPs, is responsible for ensuring that these conditions are met before a meeting takes place.

Those who have no intention of taking part in the meeting should not be treated as 'participants' for the purposes of the conditions.

When determining if it is practicable to meet in person, the governing board or arranging authority should assess:

- the facts of the case
- the circumstances in which a meeting in person could be expected to take place
- the needs of the intended participants, as far as this is possible
- the latest public health guidance, including the actions for schools during the coronavirus outbreak

○ **Arranging a remote access meeting**

The governing board or arranging authority should explain the technology they propose to use and make sure that the participants, particularly pupils and their families, know that they do not have to agree to a meeting to be held via remote access.

Where a parent or pupil has given their agreement for a meeting to be held via remote access, the other participants should accommodate that preference except in exceptional circumstances.

Governing boards, arranging authorities and panel members must:

- comply with relevant equalities legislation
- recognise that some participants may find it difficult to participate in a remote access meeting, for example if they have a disability or if English is not their first language

The governing board or arranging authority should take reasonable steps to facilitate a parent, child or young person's access to the technology required. For example, governing boards and arranging authorities may wish to run a 'test meeting' to trial if technology that is going to be used is suitable.

If a governor, trustee, panel member or other participant requires support to access or use remote access technology, the governing board or arranging authority should facilitate this to ensure the meeting can be held promptly.

Fairness and transparency

The governing board or arranging authority must assess whether a meeting can be held fairly and transparently via remote access with reference to the facts of each case. It cannot be decided by following a general policy.

If a governing board or arranging authority is not satisfied that a meeting can be held fairly and transparently via remote access, they should consider using reasonable adjustments to overcome this. They should consult with parents and pupils to take account of their wishes.

Running the meeting

If a meeting is held via remote access, the chair must make every effort to check the participants understand the proceedings and can engage with them. This is to ensure the meeting is conducted fairly.

If, once the meeting starts, the meeting cannot proceed fairly, for example because a participant cannot access the meeting, the governing board or IRP should adjourn the meeting.

The use of remote access does not alter other procedural requirements that may apply to governing boards, arranging authorities or IRPs. For example, if a parent requests the appointment of a special educational needs (SEN) expert to advise a review panel, the arranging authority must appoint one and cover the cost as normal. Parents may be joined by a friend or representative as normal.

Though governing boards and IRPs must consider written representations if they are made, the law does not allow for solely paper-based 'meetings', conducted in writing.

As long as the conditions for a remote access meeting are met, it is possible for some participants to be present in person and for others to join the meeting via remote access. All the participants must have access to technology which will allow them to hear and be heard by others throughout (and to see and be seen throughout, if a live video link is used).

To help meetings run smoothly and ensure they are accessible for participants, governing boards and IRPs must:

- provide clear instructions about how to join the meeting virtually, and distribute the relevant papers in a timely manner ahead of the meeting
- indicate a named person who participants can contact with any questions they may have beforehand
- consider holding a pre-meeting with attendees to check that the available technology is suitable, and all participants understand how to access the meeting
- ensure the chair is prepared to explain the agenda at the start and to provide clear guidance on how the meeting will be run, for example:
 - how participants should indicate they wish to speak
 - how any 'chat' functions should be used
 - whether there will be any breaks in proceedings
 - how participants can access advocacy services during the meeting
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Applications for an independent review

The deadline for applications for an independent review has been reinstated to normal statutory timescales (15 days) in relation to permanent exclusions occurring from 25 September 2021. Applications for an independent review must be made within 15 school days from the date on which notice of the governing board's decision is given in writing to parents, or directly to the pupil if they are 18 or above.

Schools must allow 15 school days to pass without an application having been made before deleting the name of a permanently excluded pupil from their admissions register. This is in accordance with the Education (Pupil Registration) (England) Regulations 2006 (as amended).

The deadline for applications for an independent review in relation to permanent exclusions occurring between 25 September 2020 and 24 September 2021 remains 25 school days from the date on which notice of the governing board's decision is given in writing to parents, or directly to the pupil if they are 18 or above.

● **Roles and responsibilities**

The LA is responsible for:

- Having due regard to the relevant statutory guidance when carrying out its duties in relation to the education of LAC.

The Management Committee is responsible for:

- Providing information to the Secretary of State and LA about any exclusions within the last 12 months.
- Arranging suitable full-time education for any student of compulsory school age excluded on a fixed-term basis.
- Considering parents' representations about exclusions within 15 school days of receiving notice if the appropriate requirements are met.
- Where an exclusion would result in a student missing a public examination or test, considering the exclusion before this date.
- Considering whether it would be appropriate for a student to be permitted onto the school premises to sit the public examination or test.
- Arranging the representation meeting at a time and date convenient to all parties, but in compliance with the statutory time limits.
- Adhering to its responsibilities to consider the reinstatement of students.
- Considering the interests and circumstances of the excluded student, including the circumstances in which they were excluded, and have due regard to the interests of others at the school.
- Using the civil standard of proof (based on the 'balance of probabilities', it is more than likely that the fact is true) when establishing the facts relating to an exclusion.
- Ensuring clear minutes are taken of the representation meeting.
- Noting the outcome of the representation meeting on the student's education record, along with copies of relevant papers for future reference.
- Notifying the student's parents, the headteacher and LA of its decision and the reasons for it, without delay.

- Where appropriate, informing parents of where to apply for an independent review panel.
- Informing parents of relevant sources of information.
- Reconvening within 10 school days to reconsider reinstatement of a student where directed to do so by the exclusions review panel.

The clerk to the exclusions review panel is responsible for:

- Making reasonable efforts to inform the appropriate individuals that they are entitled to:
 - Make written representations to the panel.
 - Attend the hearing and make oral representations to the panel.
 - Be represented.
- Making reasonable efforts to circulate copies of relevant papers at least five school days before the review to all parties.
- Giving all parties details of those attending and their role, once the position is clear.
- Attending the review and ensuring that minutes are produced in accordance with instructions from the panel.

The headteacher is responsible for:

- Maintaining a calm, safe and purposeful environment to ensure all students can benefit from the opportunities provided by education and to minimise potential exclusions.
- Applying the civil standard of proof when establishing the facts in relation to an exclusion.
- Complying with their statutory duties in relation to students with SEND when administering the exclusion process, as outlined in the Special Educational Needs and Disability (SEND) Policy.
- Considering any contributing factors that are identified after an incident of poor behaviour has occurred, e.g. if a student has suffered bereavement, bullying or has a mental health issue.
- Considering the use of a multi-agency assessment for a student who demonstrates persistent disruptive behaviour.
- Considering what extra support may be needed to identify and address the needs of individual students, particularly those with SEND, eligible for FSM, LAC and those from certain ethnic groups.
- Engaging effectively with parents in supporting the behaviour of students with additional needs.
- Withdrawing any exclusions that have not been reviewed by the Management Committee, where appropriate.
- Ensuring any decision to exclude is lawful, rational, reasonable, fair and proportionate.
- Complying with the requirements of the Equality Act 2010 when deciding whether to exclude a student.

- Ensuring they have considered their legal duty of care when sending a student home following an exclusion.
- Making the decision to exclude based on the evidence available at the time, regardless of any police investigation and/or criminal proceedings.
- Notifying a student's parents without delay where the decision is taken to exclude the student, including the days on which the parents must ensure the student is not present in a public place at any time during school hours, as well as any other necessary information statutorily required.
- Ensuring that all information provided to parents is clear and easily understood.
- Notifying the Management Committee and LA of their decision to exclude a student where appropriate, as well as the student's home authority if required.
- Notifying the Management Committee once per term of any exclusions not already notified.
- Organising suitable work for excluded students where alternative provision cannot be arranged.

- **Grounds for exclusion**

The school will only exclude a student where it is absolutely necessary

In all cases, the headteacher will decide which exclusion period a student will be subject to, depending on what the circumstances warrant.

- **The headteacher's power to exclude**

Only the headteacher has the power to exclude a student from the school, and is able to decide whether this is on a fixed-period or permanent basis. All exclusions will only be issued on disciplinary grounds.

Any decision made to exclude a student will be lawful, proportionate and fair, with respect to legislation relating directly to exclusions and the school's wider legal duties

All exclusions will be formally recorded on SIMS.

When sending a student home following any exclusion, the headteacher will ensure that they exercise their duty of care at all times and will always inform the parents.

The headteacher will apply the civil standard of proof when responding to the facts relating to an exclusion, i.e. that 'on the balance of probabilities' it is more likely than not that the facts are true.

The headteacher may withdraw any exclusion that has not already been reviewed by the Management Committee.

At all times, the headteacher will take into account their legal duties under the Equality Act 2010 and the 'Special educational needs and disability code of practice: 0 to 25 years', ensuring that they do not discriminate on any grounds, e.g. race, sex, disability, and will not increase the severity of a student's exclusion on these grounds.

The headteacher will not issue any 'informal' or 'unofficial' exclusions, such as sending a student home to 'cool-off', regardless of whether or not the parents have agreed to this.

- **Duty to inform parents**

Following the headteacher's decision to exclude a student, a member of SLT will immediately inform the parents, in person or by telephone, of the period of the exclusion and the reasons behind this.

The headteacher will inform the parents in writing (electronically if written permission has been received from the parents for notices to be sent this way) of the following:

- The reason(s) for the exclusion
- The length of the fixed-period exclusion
- Their right to raise any representations about the exclusion to the Management Committee, including how the student will be involved in this and how the representations will be made
- Their right to attend a meeting where there is a legal requirement for the Management Committee to consider the exclusion, and the fact that they are able to bring an accompanying individual
- Relevant sources of free, impartial information

Where the student is of compulsory school age, the headteacher will inform the parents by the end of the afternoon session that:

- For the first five days of the exclusion (or until the start date of any alternative provision or the end of the exclusion where this is earlier), parents are legally required to ensure that their child is not present in a public place during school hours without justification, and that parents may receive a penalty fine if they fail to do so.

- **Duty to inform the Management Committee and LA**

The headteacher will inform the Management Committee and LA, without delay, of the following:

- Any exclusions which would result in the student being excluded for more than five school days in a term
- Any exclusions which would result in the student being absent from a public examination.

For any exclusions, other than those above, the headteacher will notify the Management Committee and LA once per term.

All notifications to the Management Committee and LA will include the reasons for exclusion and the duration of any fixed-period exclusion.

- **Considering exclusions**

The Management Committee will consider any representations made by parents in regard to exclusions.

Parents and, where requested, a friend or representative, the headteacher and a member of the LA will be invited to attend any consideration of exclusions and will be able to make representations.

Any meeting to consider reinstatement of a student will be arranged at a date and time convenient for all parties, and in compliance with any statutory time limits.

The Management Committee will consider the reinstatement of an excluded student, where:

- The exclusion is fixed-period, and would bring the student's total number of excluded school days to more than 15 in any given term.
- The exclusion would result in the student missing a public examination.

In the case of a fixed-period exclusion where the student's total number of excluded days is more than five but less than 15 school days within a term, if requested by the parents, the Management Committee will consider exclusions within 50 school days of receiving notification.

In the case of a fixed period exclusion, where the student's total number of excluded school days does not amount to more than five, in the absence of any such representations, the Management Committee is not required to meet and cannot direct the reinstatement of the student.

Where exclusion would result in a student missing a public examination, the Management Committee will consider the exclusion before the test to decide whether the student should be reinstated in time to take the examination.

If it is not practicable for a sufficient number of Management Committee to consider the decision before the examination, the chair of Management Committee will consider the exclusion alone and decide whether or not to reinstate the student.

In light of the above, the Management Committee will also consider whether it would be appropriate to allow the excluded student to enter the premises to take the examination.

When considering the reinstatement of an excluded student, the Management Committee will:

- Only discuss the exclusion with the parties present at the meeting.
- Ask for any written evidence prior to the meeting.
- Circulate any written evidence and information to all parties, at least five school days in advance of the meeting.
- Allow students and parents to be accompanied by a person of their choice at the meeting.
- Consider what reasonable adjustments need to be made to support the attendance and contribution of parties at the meeting.
- Identify the steps needed to enable and encourage the excluded student to attend the meeting and speak on their behalf, or how they may contribute personal views by other means if attendance is not possible.

- Consider the interests and circumstances of the excluded student, including the grounds for exclusion.

- **Reaching a decision**

After considering exclusions, the Management Committee will either:

- Decline to reinstate the student.
- Direct the reinstatement of the student immediately, or on a specified date.

If reinstatement would make no practical difference, e.g. if the student has already returned to school following a fixed-period exclusion or the parents make clear they do not want their child reinstated, the Management Committee will still consider whether the student should be officially reinstated, and whether the headteacher's decision to exclude the student was fair, lawful and proportionate, based on the evidence presented.

The Management Committee will apply the civil standard of proof when responding to the facts relating to an exclusion, it is more likely than not that the facts are true.

To reach a decision, the Management Committee will:

- Identify the steps they intend to take to ensure that all parties involved will have the opportunity to participate and present their views.
- Ensure that minutes are taken of the meeting as a record of the evidence that was considered.
- Ask all parties to withdraw from the meeting before concluding their decision.
- Consider whether the exclusion of the student was lawful, proportionate and fair, taking into account the headteacher's legal duties and any evidence that was presented to the Management Committee in relation to the decision to exclude.
- Record the outcome of the decision on the student's educational records, along with copies, which will be kept for at least six months.
- Make a note of their findings, where they have considered an exclusion but cannot reinstate the student.

- **Notification of considered exclusions**

The Management Committee will notify the parents of the excluded student, the headteacher and the LA of their decision following the consideration of an exclusion, in writing and without delay.

The Management Committee will also notify parents that, if they believe an exclusion has been issued as a result of discrimination, then they are required to make a claim under the Equality Act 2010 to the First-tier Tribunal (SEND), and that this should be within six months of when the discrimination allegedly took place.

After any conclusion, the Management Committee will notify the parents, and all other parties involved, of the decision that was made and the reasoning for this, in sufficient detail.

- **Criminal investigations**

The headteacher will not postpone taking a decision to exclude a student due to a police investigation being underway, or any criminal proceedings that are in place.

The headteacher will give particular consideration when deciding to exclude a student where evidence is limited by a police investigation, to ensure that any decision made is fair and reasonable.

If the Management Committee is required to consider the headteacher's decision in these circumstances, they will not postpone the meeting and will make a decision based on the evidence available.