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To: Headteachers, Principals, Chairs of Governing Boards, and Multi-Academy Chief Executives

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Our ref IP/VB

Your ref

Date 22 April 2020

Dear colleague

### **Permanent Exclusions Currently in Process**

There are a number of schools that are currently in the middle of the permanent exclusion process, where prior to the end of Friday 20 March 2020, the headteacher had made a decision to permanently exclude. However, the governors' meetings and potential Independent Review Panels (IRPs) are yet to be heard. You will be aware that there are statutory timescales involved in these processes, and that an excluded pupil cannot be taken off the school roll until a decision has been taken on whether or not they should be reinstated in accordance with these timescales. Derbyshire County Council has been awaiting guidance from the Department for Education in relation to school closure (partial or otherwise) and its effect on the exclusion process. We have now received the following guidance:

<https://www.gov.uk/government/publications/covid-19-school-closures/guidance-for-schools-about-temporarily-closing#exclusions>

#### **“15.1 What is the effect of COVID-19 on governing board’s duties to consider reinstatement of excluded pupils, and the process for independent review panels (IRPs)?**

The timeframes set out in the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 remain in force. This applies to all exclusions, including those that were issued before 23<sup>rd</sup> March.

The Government appreciates that it may not be possible to meet the timeframes set out in regulations for review meetings and IRPs, due to the disruption caused by COVID-19 and the health risks of holding meetings. The Regulations themselves envisage that the timeframes may not always be met, which is why they specify that meetings and panel hearings *must still go ahead* even if the relevant deadline has been missed. It is for the Governing Board or arranging authority to assess the facts of the case and decide whether the statutory deadlines are achievable or whether, in the circumstances, the meeting has to be delayed or alternative technology (such as telephone or videoconference facilities) has to be used. Governing Boards and arranging authorities should continue to take reasonable steps to ensure meetings are arranged for a time when all parties are able to attend.”

Government guidelines on safety, social distancing and self-isolation are of paramount importance during these unprecedented times. The statutory process for exclusions is still in force during COVID-19 and must be adhered to by schools and local authorities (the statutory DfE guidance is entitled 'Exclusion from maintained schools, academies and pupil referral units in England' [September 2017] and can be found on the gov.uk website).

Governors and local authorities have a further obligation to observe the principles of natural justice by ensuring that all parties have a fair opportunity to make representations and be able to fully participate in the meeting. The way the meetings is held by governors and IRPs would change during the pandemic. Meetings of the governors and IRP could be held creatively. Examples include holding meetings on a paper only basis, by telephone or video conference, or by any other technological means. Governors and local authorities (where appropriate) must also take into account any special requirements the parties may have. Safety and security issues should also be carefully considered if meetings are to be facilitated by technology.

If alternative methods of holding meetings have been explored and deemed not possible, then governors and IRPs could, as a last resort, decide to postpone their meeting. Effectively the meeting is adjourned. A postponement should, however, not be for an indefinite period, and where possible, a date for the meeting should be set. All parties should be kept informed of any meeting arrangements without delay, and their views on such arrangements be taken into account. Schools and the local authority (where appropriate) would need to record their decision and reasons for delaying meetings, and why deadlines cannot be met within the statutory timescales.

Derbyshire County Council appreciates that effectively a calendar month has passed prior to DfE advice being available. Therefore, if schools have **already** adjourned or postponed meetings, or a pupil would have ordinarily been taken off roll (since March 20<sup>th</sup>, 2020) prior to receiving Government advice, then schools are urged to review their cases of permanent exclusion in light of the DfE guidance. It is imperative that each individual case is looked at on its own merit and that parents' rights to make representations have not been jeopardised. The excluded pupil will continue to remain on school roll until the end of the exclusion process and Day six provision will remain a local authority responsibility.

If you have any queries, please contact Sharon Neak: [sharon.neak@derbyshire.gov.uk](mailto:sharon.neak@derbyshire.gov.uk)

Yours sincerely

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