

Birkdale High School



Birkdale
High School

Aspire - Thrive - Succeed

Exclusion Policy
October 2019



Birkdale High School Exclusion Policy

Date of Policy: October 2019
Member of staff responsible: Headteacher
Review date: October 2021

This policy does not supersede but should be read in conjunction with and summarise the available statutory framework such as the Education Act 2002, the Education and Inspection Act 2006 and the Equality Act 2010 as well as the statutory guidance document entitled “Exclusion from maintained schools, academies and student referral units in England” published by the DFE.

The decision to exclude

The decision to exclude a student permanently will not be taken without due consideration and only:

- In relation to serious breaches of the school’s behaviour policy
- If allowing the student to remain in school would seriously harm the education and welfare of the student or others in the school.

For those at risk of exclusion the school will endeavour to explore all possible alternatives and preventative measures such as:

- Engagement with parents
- Change of teaching sets or class
- Curriculum alternatives
- Temporary placement in Learning Support Unit or PRU
- Managed move
- Consideration by SENCO
- Assessment for SEN
- Allocation of key worker
- Referral to specific support service.

Only the headteacher or in his absence the acting head can exclude a student. Other disciplinary activities can be delegated.

Before deciding to exclude, the headteacher will:

- Conduct a thorough investigation
- Consider all the evidence to support the allegation

- Allow and encourage the student to give their version of the incident
- Check if the incident was provoked
- Consult others if necessary
- Keep a written record of actions taken.

Standard of proof

In making a decision the headteacher has to look at the balance of probability. Is it more probable than not that the alleged behaviour/act had taken place? This is not the same as the criminal standard of beyond reasonable doubt. If a criminal prosecution is possible or on-going, the evidence available may be limited but this will not prevent the headteacher from reaching a decision.

An exclusion will not be appropriate in the following circumstances:

- Minor incidents eg failure to do homework
- Poor academic performance
- Lateness or truancy
- Breaches of school uniform rules
- Because of parents' behaviour
- Protecting victims of bullying.

Procedures

The headteacher must notify governors and LA of:

- All permanent exclusions
- Exclusions that would result in a student being excluded for more than 5 school days (or more than 10 lunchtimes) in any one term
- Exclusions that would result in a student missing a public exam.

Following permanent exclusion, a student will remain on roll until:

- Any review is determined
- The time limit for a review has expired
- Parent/carer advises no review is to be made.

During the first 5 days the school will send work home.

The child must not be seen in public place during school hours otherwise parents may be fined.

The Local Education Authority must assess needs and will arrange suitable provision for full-time education after the 5th day. For students with EHCP the provision must be consistent with plan.

Behaviour outside school

A school's discipline policy does cover behaviour outside of school e.g on a school trip or college placements.

The headteacher can also exclude for behaviour outside of school and not on school business if there is a clear link between that behaviour and maintaining good behaviour among the student body as a whole.

Procedure for excluding a student: role of headteacher

The headteacher will inform the parent/carer as soon as possible of the decision and by the end of school at the latest. Contact can be made by phone but notice must be in writing (email is acceptable) and must include:

- For a permanent exclusion, the fact that it is permanent
- The reason for the exclusion
- Right to make representations to the governing body

- How representations can be made
- Parents' right to attend the governing body meeting.

For a permanent exclusion, if the student lives outside the LA where the school is, the headteacher must also inform the home LA so that they can make arrangements for providing full time education for the student concerned.

Responsibilities of governing body

The governing body must review certain exclusions. This role will be delegated to a discipline committee comprising at least 3 governors. Governors will receive training. If an exclusion would result in a student missing a public examination, the governing body should meet before the date of the exam.

In the case of permanent exclusion or fixed-term totalling more than 15 days in one term, a meeting must be convened within 15 school days.

Governors must invite the parent/carer, headteacher and an LA officer to the review.

Written statements will be requested and if provided must be with the clerk to the governors at least 5 days before the meeting to enable dissemination. Written statements will be circulated (at least 5 days) in advance of the meeting together with a list of those who will be attending the meeting, including the student if they are to attend.

The governing body should comply with statutory time limits but a decision will not be invalid simply on the grounds that it was made out of time. The role of the governing body is to consider the parent's/carer's representations about the exclusion. The review cannot continue if at any time the number of governors falls below three. Sufficient time should be allowed for both sides to put their case and also to question the other side.

Where the school's case relies on physical evidence, this should be retained and be available to the governing body. All parties can put forward fresh evidence but the headteacher cannot introduce new reasons for the exclusion. The school may wish to call witnesses to any alleged incident which may include an alleged victim. Written statements may be submitted but all statements must be attributed unless there are good reasons to protect the anonymity of the witness. The discipline committee must decide how much weight to attach to written statements.

The headteacher will attend the hearing to clarify any points and to answer any questions relating to the incident or events leading up to the exclusion. No party to the review will be left alone with the governing body, either during or after the hearing. The governing body may ask the LA for advice but must make its decision alone. After the hearing, all parties must be asked to withdraw. The clerk may remain with the governing body to help it by reference to notes and also the wording of the decision letter.

Where reinstatement is not practical, either because the student is back in school or the parent/carer does not want reinstatement, the governing body must consider whether the exclusion was justified on the evidence. The outcome of the review will be added to the student's school record.

There are only 2 decisions that the governing body can make:

- To uphold the exclusion
- To direct reinstatement either immediately or by a particular date. Conditions cannot be attached to the reinstatement.

The panel must inform the parent/carer, the headteacher and the LA of its decision in writing without delay, stating the reasons for the decision. If the student resides in a different LA, the home LA must also be informed.

In the case of a permanent exclusion, the notification must include:

- Right of review to an Independent Review Panel
- The name and address where the application is to be sent
- The date by which review must be made (15 school days after the day on which decision was communicated).

The application for review must set out the grounds on which it is being made including SEND. Parents/carers have a right to require the local authority/Academy Trust to appoint a SEND expert at no cost to parents/carers. Parents/carers must make it clear if they wish a SEND expert to be appointed.

Parents/carers can appoint a representative or friend to make written and oral representations. Parents/carers can make a claim for discrimination under The Equality Act 2010 to First Tribunal and County Court but a claim for discrimination must be made within six months.

After the meeting, a copy of the decision letter and any relevant papers will be placed on the student's school record. The governing body will ensure that clear minutes are taken of the meeting. These minutes will be available to all parties on request.

Independent Review Panels

If issues raised by two or more reviews are the same or connected, the panel can combine the hearings, providing all parties agree. The panel can agree to combine the hearings or not but all views must be taken into consideration.

The same panel will hear all reviews connected with the same incident.

The panel will comprise 3 or more panel members:

- Lay member (Chair)
- Governor (with 12 consecutive months as a governor in last 5 years)
- A headteacher (within last 5 years)

The following persons are disqualified from sitting on a panel:

- A member of the LA, Academy trust or governing body of the excluding school.
- An employee of the LA, Academy or governing body, unless they are employed as a headteacher at another school.
- The headteacher of the school or have been the headteacher in the last 5 years.
- Any connection with an interested party
- Not received relevant training within the last 2 years.

Every care must be taken to avoid any form of bias.

Training should cover:

- The requirement of regulations
- The role of the chair
- The role of the clerk
- Equality Act 2010
- Section 6 of the Human Rights Act 1998
- The need to observe procedural fairness and the rules of natural justice.

Role of the Clerk:

- Appoint the panel if requested
- Send out the paperwork for the review
- Advise all parties about the process and procedure
- Must be clear about the panel's decision.

Role of the Chair:

- Control of the proceedings
- Outline the procedure
- Explain independence
- Explain the options open to the panel
- Explain how and when parties will be advised of outcome
- All written evidence should be circulated at least 5 school days before the hearing.
- A locally prepared summary of the exclusions guidance should be circulated.
- There is no statutory deadline for submitting evidence.

The procedure for the hearing should be decided by the appeal panel but generally should follow the following pattern:

- The chair to explain the procedure
- The headteacher and governing body will explain why the student was excluded
- The parent to put their case
- The headteacher of governing body to question parent
- LA can make representations and can be questioned
- The SEND expert, if in attendance, may be asked for impartial advice
- Summing up by the headteacher and the governing body
- Summing up by the parent
- The panel can ask questions at any time
- All parties leave.

The SEND expert's role is similar to an expert witness. S/he should not assess student's SEND needs but assess and advise if school policies and procedures were legal in relation to SEND.

Independent Review Panels – The Decision

The panel should consider the basis of the headteacher's decision and the procedures followed having regard to the following:

- Whether the headteacher and governing body complied with the law and guidance when making decisions
- The school's behaviour and equal opportunities policies and, if appropriate, anti-bullying, SEND, race and disability equality policies.
- The fairness of the exclusion in relation to other students involved in the same incident.

Where a parent makes a claim alleging discrimination, this does not preclude the panel considering this even if a claim has been made to either the First Tier Tribunal or County Court.

A review panel may:

- Uphold the decision to exclude
- Recommend that the governing body reconsiders their decision
- Quash the decision and direct the governing body to consider the exclusion again.

Quash the decision

The Review Panel should consider the following principles:

- Illegality
- Irrationality
- Procedural impropriety.

Independent Appeal Panels – Record of Proceedings

The clerk should ensure that minutes are kept of the hearing including details of attendance, voting and the decision.

The panel must let all parties know its decision without delay.

The letter must explain the reasons for the decision.

The panel's decision is subject to investigation by the LGO or a Judicial Review.