



EXCLUSION POLICY

2022/23

Thrybergh Academy & Sports College

THRYBERGH ACADEMY

Arran Hill, Thrybergh, Rotherham, S65 4BJ

☎ 01709 850471 ✉ contacts@thrybergh.com 🌐 thrybergh.com

HEADTEACHER: Mr D Burnham



Thrybergh Academy Exclusion Policy – March 2023

This policy adheres to the DfE statutory guidance on Exclusion from Schools and Academies in England.

Introduction

Thrybergh Academy is committed to promoting good discipline and maintaining a high-challenge, low-fear environment where students can learn and thrive. Tolerance and mutual respect for the rights of others underpin our behaviour expectations.

The school provides a vast range of support to students who display poor or challenging behaviour.

Decisions to exclude lie solely with the Headteacher, or in his absence the Deputy Headteacher. When establishing the facts surrounding an incident which may lead to exclusion, the Headteacher must apply the civil standard of proof “on the balance of probabilities”, and **not** the criminal standard of “beyond reasonable doubt”.

The Decision to Exclude

Exclusions are either **fixed term** (for a set number of days) or **permanent**.

The decision to exclude a student will be taken by the Headteacher in the following circumstances:

- In response to a serious breach or persistent breaches of the School’s Behaviour Policy;
- If allowing the student to remain in School would seriously harm the education or welfare of the student or others in the School.
- If the impact of not excluding the pupil would harm the integrity of the school’s behaviour policy.

The behaviour of a student outside school can be considered as grounds for an exclusion decision.

Before deciding whether to exclude a student either permanently or for a fixed period the Headteacher will ensure appropriate investigations have been carried out, considering all the evidence available. Exclusion, whether fixed term or permanent may be used for any of the following, all of which constitute examples of unacceptable conduct, and are infringements of the School’s Behaviour Policy:

- Defiance
- Repeated breaches of the school behaviour policy
- Verbal abuse to Staff
- Verbal abuse to student
- Using racist, homophobic or sexist language
- Physical abuse to/attack on Staff
- Physical abuse to/attack on student
- Indecent behaviour
- Possession of a weapon
- Damage to property
- Misuse of illegal drugs or other substances including supplying
- Theft
- Serious actual or threatened violence against another pupil or a member of staff.
- Sexual abuse or assault.

This is not an exhaustive list and there may be other situations where the Headteacher makes the judgment that exclusion is an appropriate sanction. The Headteacher is empowered to make this decision as he sees fit, and there is no “tariff” regarding the number of days’ exclusion applied to a particular “offence”.

Exclusion procedure

Most exclusions are of a fixed term nature. The DfE regulations empower the Headteacher to exclude a student for one or more fixed periods not exceeding 45 school days in any one school year. If 45 days are exceeded, then this becomes a permanent exclusion.

Following exclusion parents/carers are contacted immediately by phone or electronically wherever possible. A letter will then be sent by post giving details of the exclusion and the date the exclusion ends.

Parents/carers have a right to make representations to the Governing Body and local authority as directed in the exclusion letter.

A reintegration meeting will usually be held following the expiry of the fixed term exclusion and this will involve the student, parent/carer, and a member of the school pastoral staff where appropriate.

It is school practice to monitor behaviour and work of the student very closely for the period following exclusion. This may mean the use of a report or close support by staff.

The school will make every reasonable effort to set work for excluded pupils.

In the unlikely event that the fixed term exclusion is greater than five days or an accumulation of exclusions exceed five days, school is obliged to provide full time education from the sixth day of any period of fixed term exclusion. This will usually be arranged at one of the school's secondary partner schools (Wickersley School and Sports College, Rawmarsh Community School or Clifton Community School).

During the course of a fixed term exclusion, parents/carers are advised that the student is not allowed on the school premises, and that daytime supervision is their responsibility.

Permanent Exclusion

The decision to exclude a student permanently is a very serious one. There are two main types of situation in which permanent exclusion may be considered:

- The first is a final, formal step in a concerted process for dealing with disciplinary issues following the use of a wide range of other strategies, which have been used without success. It is an acknowledgement that all available strategies have been exhausted and is used as a last resort
- The second is where there has been a very serious breach of the school behaviour policy and this may be a one-off incident.

DfE guidance states that it is for the Headteacher to decide whether a pupil's behaviour warrants permanent exclusion, due to serious or persistent breaches in the school behaviour policy, or where a pupil's behaviour means that allowing the pupil to remain in school would be detrimental to the education or welfare of the pupil or others in the school.

Any decision to permanently exclude a pupil must be reviewed by a governors' panel.

For further information, please refer to the DfE Statutory Guidance on 'Exclusion from Maintained Schools, Academies and Pupil Referral Units in England' document.

Statement of intent

At Thrybergh Academy, we understand that good behaviour and discipline is essential for promoting a high-quality education.

Amongst other disciplinary sanctions, the school recognises that exclusion of pupils may be necessary where there has been a serious breach, or consistent breaches, of the school's Behavioural Policy. Excluding a pupil may also be required in instances where allowing the pupil to

remain in school would be damaging to the education and welfare of themselves or others; in all cases, excluding pupils should only be used as a means of last resort.

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

This policy also aims to secure a pupil's right to an education despite having been excluded, by ensuring that appropriate arrangements are in place.

1. Legal framework

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

- The Education Act 2002
- The School Discipline (Pupil 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 Pupils) (England) Regulations 2007
- The European Convention on Human Rights (ECHR)
- The Equality Act 2010

1.2. 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 pupil 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'

2. Roles and responsibilities

2.1. 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.
- Arranging suitable full-time education for any pupil of compulsory school age excluded permanently, in coordination with the school.
- Reviewing and reassessing pupils' needs in consultation with their parents where they have an EHC plan and are excluded permanently, with a view to identifying a new placement.
- Arranging for an independent review panel hearing to review the decision of the governing board not to reinstate a permanently excluded pupil where required.
- Arranging the hearing without delay at a time, date and venue convenient for all parties.
- Ensuring the independent review panel consists of three or five members as appropriate, which represent the required categories.
- Ensuring all panel members and the clerk have received training within the two years prior to the date of the review.
- If requested by parents, appointing a SEND expert to attend the panel and covering the associated costs of this appointment.

2.2. The governing board 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 pupil 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 pupil missing a public examination or test, considering the exclusion before this date.
- Considering whether it would be appropriate for a pupil 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 pupils.
- Considering the interests and circumstances of the excluded pupil, 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 pupil's education record, along with copies of relevant papers for future reference.
- Notifying the pupil'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.
- Ensuring a pupil's name is removed from the school admissions register, where appropriate.
- Reconvening within 10 school days to reconsider reinstatement of a pupil where directed to do so by the exclusions review panel.

2.3. The Headteacher is responsible for:

- Implementing good levels of discipline to ensure all pupils 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 pupils with SEND when administering the exclusion process, as outlined in the Special Educational Needs and Disability (SEND) Policy.
- Determining whether a pupil will be excluded on disciplinary grounds.
- 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 pupil.
- Ensuring they have considered their legal duty of care when sending a pupil 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 pupil's parents without delay where the decision is taken to exclude the pupil, including the days on which the parents must ensure the pupil 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 governing board and LA of their decision to exclude a pupil where appropriate, as well as the pupil's home authority if required.
- Notifying the governing board once per term of any exclusions not already notified.

3. The Headteacher's power to exclude

3.1. Only the Headteacher has the power to exclude a pupil 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.

3.2. The Headteacher is able to exclude pupils from the premises where their behaviour is disruptive during lunchtime. All lunchtime exclusions will be counted as half of a school day.

3.3. The Headteacher is able to consider a pupil's disruptive behaviour outside of the school premises as grounds for exclusion.

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

3.5. All exclusions will be formally recorded on SIMs.

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

3.7. 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.

3.8. The Headteacher may withdraw any exclusion that has not already been reviewed by the governing board.

3.9. 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.

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

3.11. The Headteacher will not use the threat of exclusion as a means of instructing parents to remove their child from the premises.

4. Duty to inform parents

4.1. Following the Headteacher's decision to exclude a pupil, they will immediately inform the parents, in person or by telephone, of the period of the exclusion and the reasons behind this.

4.2. The Headteacher will inform the parents in writing of the following:

- The reason(s) for the exclusion
- The length of the fixed-period exclusion or, for a permanent exclusion, the fact that it is permanent
- Their right to raise any representations about the exclusion to the governing board, including how the pupil 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 governing board to consider the exclusion, and the fact that they are able to bring an accompanying individual
- The arrangements that have been made for the pupil to continue their education prior to the organisation of any alternative provision, or the pupil's return to school
- Relevant sources of free, impartial information

4.3. Where the pupil 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.

4.4. Where the Headteacher has arranged alternative provision, they will also inform the parents of the following:

- The start and end date for any provision of full-time education
- The address at which the provision will take place
- Any information necessary for the pupil to identify the person they should report to on the starting date

4.5. Where the Headteacher is unable to provide information on alternative provision by the end of the afternoon session, they will provide the information in a subsequent written notice without further delay, and within 48 hours of the pupil beginning the provision.

4.6. If the alternative provision is due to begin before the sixth day of the exclusion, the Headteacher is able to give less than 48 hours of notice, with parental consent.

4.7. If the Headteacher has decided to exclude the pupil for a further fixed period following their original exclusion, or to permanently exclude them, they will notify the parents without delay and issue a new exclusion notice to parents.

5. Considering exclusions

5.1. The governing board will consider any representations made by parents in regard to exclusions.

6. Reaching a decision

6.1. After considering exclusions, the governing board will either:

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

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

6.3. The governing board 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.

6.4. To reach a decision, the governing board 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 pupil was lawful, proportionate and fair, considering the Headteacher's legal duties and any evidence that was presented to the governing board in relation to the decision to exclude.
- Record the outcome of the decision on the pupil'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 pupil.

7. Notification of considered exclusions

7.1. The governing board will notify the parents of the excluded pupil, the Headteacher and the LA of their decision following the consideration of an exclusion, in writing and without delay.

7.2. In the case of a permanent exclusion, where the governing board decides not to reinstate the pupil, they will notify the parents:

- That it is permanent, and their right for it to be reviewed by an independent review panel.
- Of the date by which an application for review must be made.

- Of the name and address of whom the review application should be submitted to.
- That any application should set out the grounds on which it is being made and that, where appropriate, this should include reference to how a pupil's SEND is considered relevant to the exclusion.
- That, regardless of whether a pupil has been identified as having SEND, the parents have a right to require the governing board to ensure a SEND expert attends the review.
- Of the role of the SEND expert that will attend the review, and that the parents will not be charged for this.
- That they are required to make it clear if they wish for a SEND expert to attend the review.
- That they may appoint someone at their own expense to make representations to the panel.

7.3. The governing board 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.

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

8. Removing permanently excluded pupils from the school register

8.1. The Headteacher will remove pupils from the school register if:

- 15 school days have passed since the parents were notified of the governing board's decision not to reinstate the pupil and no application for an independent panel review has been received.
- The parents have stated in writing that they will not be applying for an independent panel review following a permanent exclusion.

8.2. If an application for an independent panel review has been made within 15 school days, the Headteacher will wait until the review has been determined, or abandoned, and until the governing board has completed any reconsideration that the panel recommended or directed it to carry out, before removing the pupil from the school register.

8.3. If a pupil's name is to be removed from the register, the Headteacher will make a return to the LA, which will include:

- All the particulars which were entered in the register.
- The address of any parent with whom the pupil normally resides.
- The grounds upon which the pupil's name is to be removed from the register.

8.4. Any return to the LA will be made as soon as the grounds for removal are met and no later than the date in which the pupil's name was removed.

8.5. If a pupil's name has been removed from the register and a discrimination claim is made, the pupil may be reinstated following a decision made by the First-tier Tribunal (SEND) or County Court.

8.6. Whilst a pupil's name remains on the admissions register, the appropriate code will be used to mark the pupil's attendance:

- Code B: Education off-site
- Code D: Dual registration
- Code E: Absent and not attending alternative provision

9. Independent review panel

9.1. The LA will review the governing board's decision not to reinstate a permanently excluded pupil, if the parents submit their application for this within the required time frame.

9.2. The LA will constitute an independent review panel of three or five members that represent the following categories:

- A lay member to chair the panel. This individual will not have worked in any school in a paid capacity.
- A current or former school governor who has served for at least 12 consecutive months in the last five years.
- A Headteacher or individual who has been a Headteacher within the last five years. 9.3. Parents are required to submit their applications within:
 - 15 school days of the governing board's notification of their decision.
 - 15 school days of the final determination of a discriminatory claim made under the Equality Act 2010.

9.4. Any application made outside of this timeframe will not be reviewed.

9.5. Parents are able to request an independent panel review even if they did not make a case to, or attend, the governing board's initial consideration of the exclusion.

9.6. The LA will adhere to all statutory guidelines when conducting an independent panel review, as outlined in the DfE's statutory guidance document 'Exclusion from maintained schools, academies and pupil referral units in England' 2017.

10. Appointing a SEND expert

10.1. If requested by parents in their application for an independent review panel, the LA will appoint a SEND expert to attend the panel and cover the associated costs of this appointment.

10.2. The LA will make arrangements to indemnify the SEND expert against any legal costs and expenses reasonably incurred as a result of any decisions or actions connected to the review and which are taken in good faith.

10.3. Parents have a right to request the attendance of a SEND expert at a review, regardless of whether the school recognises that their child has SEND.

10.4. The SEND expert's role is set out in section 11 of this policy.

10.5. Individuals will not serve as a SEND expert if they have, or at any time have had, any connection with the LA, school, parents or pupil, or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their ability to act impartially; however, an individual is not taken to have such a connection solely because they are an employee of the LA.

10.6. The SEND expert will be a professional with first-hand experience of the assessment and support of SEND, as well as an understanding of the legal requirements on schools in relation to SEND. Examples of suitable individuals might include educational psychologists; specialist SEND teachers; SENCOs; and behaviour support teachers.

10.7. Recently retired individuals are not precluded from fulfilling this role; however, the LA will, during interview, assess the knowledge of such individuals in order to ensure that they have a good understanding of current practice and the legal requirements on schools in relation to SEND.

10.8. Whilst individuals are not automatically taken to be partial simply because they are an employee of, or contracted by, the LA, they will not have had any previous involvement in the assessment or support of SEND for the excluded pupil, or siblings of the excluded pupil. The LA will request that prospective SEND experts declare any conflict of interest at the earliest opportunity.

10.9. The final decision on the appointment of a SEND expert is for the LA to make, but it will take reasonable steps to ensure that parents have confidence in the impartiality and capability of the SEND expert. Where possible, this will include offering parents a choice of SEND expert. In order to meet its duties within the statutory time frame, the LA will consider maintaining a list of individuals capable of performing the role of SEND expert in advance of a request.

10.10. The LA will determine the amount of any payment in relation to the appointment of the SEND expert, such as financial loss, travel and subsistence allowances.

11. The role of a SEND expert

11.1. The SEND expert's role is analogous to an expert witness, providing (orally and/or written) impartial advice to the panel on how SEND might be relevant to the exclusion. The SEND expert will base their advice on the evidence provided to the panel. The SEND expert's role does not include making an assessment of the pupil's SEND.

11.2. The focus of the SEND expert's advice will be on whether the school's policies which relate to SEND, or the application of these policies in relation to the excluded pupil, were legal, reasonable and procedurally fair. If the SEND expert believes that this was not the case, they will, where possible, advise the panel on the possible contribution this could have made to the circumstances of the pupil's exclusion.

11.3. Where the school does not recognise that a pupil has SEND, the SEND expert will advise the panel on whether they believe the school acted in a legal, reasonable and procedurally fair way with respect to the identification of any SEND that the pupil may potentially have, and any contribution that this could have made to the circumstances of the pupil's exclusion.

11.4. The SEND expert will not criticise a school's policies or actions simply because they believe a different approach should have been followed or because another school might have taken a different approach.

12. Appointing a clerk

12.1. The LA will decide whether to appoint a clerk to the independent review panel, or to make alternative arrangements to administer the panel.

12.2. The LA will ensure that the clerk did not serve as clerk to the governing board when the decision was made not to reinstate the pupil.

13. The role of a clerk

13.1. The clerk's role is to provide advice to the panel and parties to the review on procedure, law and statutory guidance on exclusions.

13.2. The clerk will:

- Identify, in advance of the meeting, whether the excluded pupil wishes to attend the panel hearing, taking reasonable steps to enable the pupil to feedback their views, irrespective of their attendance.
- Identify, in advance of the meeting, whether any alleged victims of the incident(s) leading up to the exclusion wish to attend the panel hearing, taking reasonable steps to enable them to feedback their views, irrespective of their attendance.
- Ensure that the panel is able to hear from any witnesses to the incident(s) leading to the exclusion, taking into account the fact that some of these people may be pupils at the school (Pupils under 18-years-old will not be allowed to appear in person without parental consent).
- Inform the parents, Headteacher and governing board, that they are entitled to: make oral and written representations to the panel; attend the hearing; and be represented.
- Ensure that all parties are:
 - Provided with copies of relevant papers at least five school days before the review, notifying the panel if any requested documents have not been provided in case the panel wishes to adjourn until a later date.
 - Informed about who is attending the meeting, and what their roles are.
- Attend the review and ensure that minutes are produced in accordance with instructions from the independent review panel.

13.3. Where a clerk is not appointed, the LA will undertake the functions outlined in paragraphs 12.1 and 12.2 of this policy.

14. The duties of independent review panel members in the conduct of a review panel

14.1. The role of the panel is to review the governing board's decision not to reinstate a permanently excluded pupil. In reviewing the decision, the panel will consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and people working at the school.

14.2. The panel will apply the civil standard of proof, rather than the criminal standard of 'beyond reasonable doubt'.

14.3. Following the review, the panel will do one of the following:

- Uphold the decision.
- Recommend that the governing board reconsiders reinstatement.
- Quash the decision and direct that the governing board reconsiders reinstatement.

14.4. The panel's decision does not have to be unanimous and can be decided by a majority vote. It is binding on the pupil, parents, the governing board, Headteacher and the LA.