

STUDENT DISCIPLINARY

GUIDANCE FOR THE PRINCIPAL

1. RECEIVING AN APPEAL

- a) A student who has been expelled or suspended for 3 weeks or more shall have the right to appeal to the Principal. In his absence, or if the Principal has taken the preliminary decision to expel, the Deputy Principal will hear the appeal.
- b) Such a right of appeal must be received in written form by the Principal within ten working days from the receipt by the student of the written notification of expulsion. Such expulsion and/or suspension letter shall be deemed to be received on the second working day after the posting of the letter, unless the student can prove otherwise.
- c) The written appeal should set out the grounds upon which the student wishes the appeal to be heard.
- d) If a public examination will be missed, the Principal has power to truncate these or any other time limits and should try and hear an appeal before the date of the examination.

2. REACHING A DECISION

- a) In considering the appeal, the Principal should decide, on the balance of probabilities, but taking into account the cogency of evidence required and the guidance, whether the student did what he or she was alleged to have done. If more than one incident of misconduct or breach of the rules is alleged which is the basis of the decision to suspend/exclude, the Principal should decide in relation to each one.
- b) The Principal should look at the decision made by the Investigator (usually the Dean of Faculty responsible for suspending or expelling the student), and the procedures followed, by having regard to the following:
 - whether or not the misconduct alleged is in breach of the Student Guidance.
 - whether or not the Investigator has followed the correct procedure in deciding that the pupil should be suspended/expelled. The Principal should not reinstate or overturn a decision on a mere technicality of procedure prior to the meeting (for example, failing to circulate a letter on time). But if the process were so flawed that important factors were not considered or justice was clearly not done then procedural issues would be relevant.
 - The student's previous record if relevant.

- The College's Code of Conduct, Equality Policy, and Disability Statement.
- The fairness of the expulsion in relation to the treatment of other students involved in the same incident.

(NB This list is not exhaustive.)

- c) Having satisfied himself as to these issues, the Principal should consider whether or not the student should be reinstated, taking into account all the circumstances.
- d) In deciding whether or not to endorse the decision to expel or suspend, the Principal should balance the interests of the expelled student against the interests of all other members of the College community.
- e) If a student appeals and raises issues concerning race or disability discrimination, then the Principal should consider if there has been discrimination, looking at the Race Relations Act 1976 and the Disability Discrimination Act 1995 and the relevant codes of practice issued by their respective bodies.

3. EVIDENCE AND WITNESSES

- a) Leaving aside any particular procedural rules set out in the guidance, the panel should in general entertain any credible material, written or oral, which was reasonably and fairly capable of affecting what the Principal had to decide.
- b) Where the evidence of the investigator rests largely or solely on physical evidence, and where the facts are in dispute, then the physical evidence, if practicable, should be retained and made available to all parties at the hearing. Where there are difficulties in retaining physical evidence, photographs or signed witness statements are acceptable.
- c) All parties to the hearing may put forward new evidence about the event that led to the expulsion, even if it was not before the investigator at the time of the expulsion. However, the investigator must not introduce new reasons for the expulsion at this stage.
- d) To reach a decision, the Principal will generally need to hear from those directly or indirectly involved. The parties may wish to call witnesses who saw the incident that gave rise to the expulsion. These may include the alleged victim or any member of staff who may have been involved in the investigation.
- e) In the case of witnesses who are fellow students, if they are under 18 it will normally be more appropriate for the panel to rely on their written witness statements and parental consent is required for their attendance. However, in some circumstances their attendance may be deemed necessary or appropriate.
- f) In principle, there is nothing wrong with the Principal making a decision without witnesses being called to give evidence.

- g) If the witnesses are over 18, there is no reason to prevent oral evidence being given by such witnesses as are deemed necessary in the context of the case. If there is a material conflict of evidence, the witness could be invited to attend and be questioned. If such a witness declined to come for no reason or for an unacceptable reason, the Principal can draw whatever inference to their evidence and non-attendance as is deemed sensible in the circumstances. Much depends on whether or not the justice of the case is such that witnesses must attend or that fairness demands that such attendance is necessary. The Principal should judge this on a case by case basis.
- h) The Principal and all other members of the investigation team should be aware of the needs of witnesses who are under 18 or who are vulnerable in any way and try and ensure that their view is properly heard.
- i) If the Principal or either of the parties wish anybody to give oral evidence, this should be notified to the clerk at least five working days before the hearing with the reasons for such a request. The clerk should then endeavour to try and have such witnesses present. If such witnesses cannot be present, the Principal should either decide in advance that an adjournment is necessary or determine such application as a preliminary issue at the date of the hearing.
- j) All written witness statements should be attributed and signed, unless the Investigator has a good reason to wish to protect the anonymity of a witness (such as, for example, the possibility of retaliation in cases involving physical violence). The general principle must always be that the accused person is entitled to know the substance and the source of the accusation.
- k) If an Investigator has anonymised written witness statements, the Principal must consider what weight, if any to attach to such written statements (which he is entitled to see) and be aware of the fact that there may be injustice in using them which may be greater than the injustice of not using them. The Principal should be prepared to disregard anonymised statements of evidence if they are damaging to the student in ways which the pupil could not be expected to deal with without knowing who has made the statement. Singular care is required, as the statements could have been made by a well-known liar or a person with a biased motive. The fact that the maker of the statement was not known by the other side might prevent the other side from calling evidence which would have cast doubt on the reliability of the statement.
- l) There could be cases where to give them any weight at all in the absence of identification would be so unfair to the student to make it improper to do so. These cases could involve difficult choices, and involves deciding and finding the least unfair course to take in all the circumstances.
- m) Because of the need to ensure fairness, the Investigator, or party who is tendering the anonymised witness statement, should ensure that the Principal should be told anything that might qualify or cast doubt on the anonymised statement.
- n) The Principal should bear in mind when deciding what weight to give to those statements the fact that no cross-examination of the witness had been possible.

He should also bear in mind that a written statement may not encompass all the relevant evidence.

- o) The Principal may need to adjourn the matter or ask for relevant inquiries if the accused or his representative raises any particular and relevant issue which should be put to the informant.
- p) The calling of character witnesses is at the discretion of the Principal, but should be permitted unless there is good reason to refuse.
- q) All witnesses should be permitted to be in the room during the course of the hearing, save in circumstances where a party makes an application or the Principal deems it necessary for their evidence to be given separately to each other, because there is a need to establish their credibility and consistency without a possible taint of contamination of evidence.
- r) Once witnesses have given their evidence, it is for the Principal to decide whether or not they should stay for the rest of the hearing.

4. THE DECISION

- a) The Principal may:
 - uphold the decision to expel or suspend,
 - direct reinstatement either immediately or at some future date, or
 - decide that he will not reinstate the student because of exceptional circumstances but that they should not have been expelled or suspended.
- b) If the individual does not wish to return to the College or the individual can no longer participate in the relevant course, then there is no need to direct reinstatement but the Principal could still uphold the appeal and amend the student's record accordingly.
- c) Furthermore, if the relationship between the student and the College/other pupils/staff has irretrievably broken down, and in balancing the needs of this individual against others at the college it is clear that reinstatement would not be sensible or practicable, then the Principal need not do so. Specific representations are required on this point from the parties. If the appeal is decided on this basis, then reasons must be given for this decision. (Further guidance may be needed to be provided on this point if the College decides that it wants to go down this path.)