



## **STUDENT DISCIPLINARY**

### **PROCEDURE FOR APPEAL TO THE DISCIPLINARY COMMITTEE OF THE GOVERNING BODY**

#### Definitions:

'The Investigator': the person who, on behalf of the College, was responsible for investigation of the incident leading to suspension or expulsion, and the decision to suspend or expel; or, in the absence of that person, such other person as may be appointed.

'The Appellant': the student appealing against suspension or expulsion.

'The Legal Advisor': an advisor whose job is to provide an independent source of legal advice should it be needed. The Legal Advisor takes no active role in the proceedings or in the decision-making.

#### **1. THE DISCIPLINARY COMMITTEE HEARING**

- a) If an expulsion or suspension is upheld by the Principal, a student has a right to appeal to the Disciplinary Committee of the Governing Body.
- b) The Appellant should write, setting out his or her grounds of appeal, to the Clerk to the Governors within ten (10) working days of the receipt by the student of the written decision of the expulsion. This will be assumed to be the second working day after the decision was posted, unless the student proves otherwise.
- c) Any appeal made after the latest date for lodging such an appeal will be out of time and will be rejected by the Disciplinary Committee, unless there are exceptional circumstances which would justify the extension of time and the interests of justice would require a hearing. In such a case, the student must provide written reasons of the exceptional circumstances to justify such extension of time when lodging his appeal and the committee should meet to consider whether or not those reasons would justify the extension of time in advance of, or as a preliminary issue, before, any hearing.

#### **2. COMPOSITION OF THE DISCIPLINARY COMMITTEE**

- a) The governing body should establish a Disciplinary Committee to hear such appeals against expulsions or suspensions and consider the representations made. The Disciplinary Committee is to decide whether or not a student should be reinstated to the College.

- b) The Governing Body may nominate a pool of Governors from which to select three Governors to serve as the Disciplinary Committee as the need arises.
- c) The Governing Body should appoint a Clerk to the committee, who should not have acted as a Clerk to the Principal in these proceedings, and who administers the procedure. This will usually be the Clerk to the Governors.
- d) The Chair should be elected from among the members of the Disciplinary Committee. The Chair shall be entitled to a vote on any resolution, and, in the event of an equal number of votes, shall also have a casting vote.
- e) The quorum for a Disciplinary Committee meeting is two members, although it would be anticipated that three members should usually sit. If, at or after the beginning of a hearing a member of the panel is absent, the hearing may be conducted, with the consent of the parties, by the other two members. In that event the panel shall be deemed to be properly constituted and the decision of the panel shall be taken by those two members.
- f) Once an appeal has been begun, no panel member may be substituted by a new member for any reason. Where a member cannot continue as a result of illness, death or resignation, a new panel will have to be constituted if there will be a quorum of less than two.
- g) If a governor has a connection to a student, or knowledge of the incident that led to the expulsion that could affect his or her ability to act impartially, he or she should step down. If any member of the committee has had an involvement with either party in the case of this expulsion he or she may need to withdraw, unless they are satisfied that there could be no reasonable doubt about their ability to act impartially. If he or she considers that there is no reasonable doubt, they should ask other members of the panel whether they agree and, even if they do, such links should be disclosed to the parties for them to determine whether or not an objection should be made. The right course is to err on the side of caution even if no objection is taken by either party.

### **3. PROCEDURE BEFORE THE HEARING**

- a) Once the written appeal has been received by the Clerk to the Governors, he or she should arrange a meeting at a time convenient to all parties. The place for the hearing should not be the Principal's Office or any other Office of Senior Management. It should have suitable private waiting areas for both parties, and it should be large enough to accommodate all parties comfortably.

- b) The appeal should be heard within a reasonable timescale, and should usually be heard within ten (10) clear working days after receipt of the written appeal. The decision will not be invalid simply because it was made out of time.
- c) The Clerk should write upon receipt of the appeal to the Appellant enclosing a copy of the appeal procedure, and asking him to provide any written statements or evidence at least five working days before the hearing. The Clerk should also inform the student at that stage of his right to be accompanied by a friend or a member of the student union or a representative, and that information about such individuals should be provided in writing to the Clerk at the same time as any written evidence. If more than one friend or representative wants to attend, then the Clerk should check with the Committee, having regard to a reasonable limit on the numbers who attend the hearing.
- d) The Clerk should circulate, at least three working days before the hearing, any written evidence provided by any party (including witness statements) and a list of those who will be present at the meeting and their role. The Clerk should ensure that the original decision to suspend or expel and the decision of the Principal are included in the evidence sent out, and the grounds of appeal raised by the Appellant. Any written representations should also be circulated.
- e) If any party is intending to raise matters or produce documents at the hearing that are not covered by the Principal's decision or grounds of appeal, they should submit these to the Clerk in good time before the hearing.

#### **4. THE HEARING**

- (a) The Disciplinary Committee should conduct the meeting along the lines of the Appeal to the Principal.
- (b) The hearing should be held in private.
- (c) The Committee can use any procedure it sees just, and should aim to ensure that the hearing is conducted in such a manner as to aid the clarification of issues and the just handling of proceedings. It should, as far as appropriate, seek to avoid formality in its proceedings. To this end, the Chairman may, if he sees fit, seek to regulate extensive and confrontational cross examination of witnesses or representatives or to require questions to be put by or through the Chair.
- (d) The Clerk should provide an independent source of advice on procedure for all parties. The Clerk should not have served as Clerk to the Principal.

- (e) The Disciplinary Committee has the power to adjourn the hearing, and can give directions or reach a provisional decision on some the issues in the appeal as it sees fit.
- (f) If the issues raised by two or more appeals are much the same, or are connected in some way, the Committee may decide to combine the hearings. The Committee should check to ensure that no-one objects to that approach.
- (g) If no member of the panel is legally qualified, or has received legal training (for example, in his role as a magistrate or member of a Tribunal), and if the Clerk is not legally qualified, the Committee should consider, and have the power to appoint, an independent Legal Advisor whose job would be to provide a source of independent legal advice should they choose to have some. The Legal Advisor should take no active role in the proceedings, but should be available to provide advice as and when required.
- (h) The following are entitled to attend the hearing and present their case:
  - The student (accompanied, if under 18 by a parent), who may be represented or accompanied by a friend, representative, advocate or legal representative. If the student is under 18, they should normally be allowed to attend the hearing alone, and speak on their own behalf; if he or she wishes to do so and parental consent has been obtained.
  - The Principal or, in his absence, the Deputy Principal, who may make oral representations.
  - The Investigator, who may make oral representations
- (i) The Principal and/or the Investigator may be legally represented, if they so choose.
- (j) The ‘victim(s)’ of the incident should be permitted to attend, if they so choose, or their evidence or representations may be given in writing or through a representative.
- (k) As with the hearing before the Principal, the panel cannot compel witnesses to attend.
- (l) The Chairman should lead the Committee in establishing the relevant facts. Committee members may wish to ask questions to clarify an issue or elicit more information. Questions from the Committee should generally be taken at the end of each party’s statement and following questioning by the other parties.
- m) Care must be taken to ensure that each party has sufficient time to put their case, and that the parent/student/representative is given sufficient

time to put his or her case and to comment on relevant information obtained from the Principal and the Investigator. Care must be taken to ensure that no party attending the hearing is present alone with the Disciplinary Committee in the absence of the other parties.

## **5. CONDUCT OF THE HEARING**

- a) The Chairman will introduce those present and explain that notes will be taken of the meeting by the Clerk to the Governing Body.
- b) The Clerk will explain the order in which the parties entitled to be heard can state their case (as previously notified to them) and that there will be an opportunity for questioning by the other parties after each presentation.
- c) The Principal and/or the Investigator will be asked to outline the grounds on which the Appellant was suspended or expelled.
- d) The Appellant and/or his/her friend will be invited to ask questions of the Principal and/or the Investigator relating to the grounds for dismissal or expulsion.
- e) The Members of the Disciplinary Committee will question the Principal and/or the Investigator.
- f) The Appellant or his/her friend will be asked to present their case and explain any special circumstances which may exist and the precise nature of the remedy sought.
- g) The Principal and/or the Investigator will be invited to ask questions of the Appellant relating to case made in f) above.
- h) The Members of the Disciplinary Committee will question the Appellant.
- i) The Principal or the Investigator will summarise the case for suspension or dismissal. (N.B. No new factors to be introduced.)
- j) The Appellant or his/her friend will summarise the grounds for appeal. (N.B. No new factors to be introduced.)
- k) The Chairman will ask all non-members of the Disciplinary Committee, other than the Clerk, to leave the hearing in order that the Committee can consider the evidence.

## **6. REACHING A DECISION**

- a) In considering the appeal, the Committee should decide, on the balance of probabilities, (i.e. if it is more probable than not) whether the student did what he or she is alleged to have done, It must then ask itself the question “Should this student be reinstated or not?” taking into

account all the circumstances of the case. If more than one incident of misconduct is alleged which is relied upon by the Principal and the Investigator, then the Committee should decide in relation to each one

- b) However, the more serious the allegation, the more convincing the evidence substantiating the allegation needs to be. This is not the same as requiring the criminal standard to be applied but it does mean that when deciding upon more serious allegations a wider range of evidence may be necessary to determine whether it is more probable than not the student has committed the offence; this is sometimes known as the ‘distinctly more probable test’.
- c) The Committee should consider the basis of the original decision to expel, and the procedures followed, having regard to the following:
- Whether or not the original decision to expel complied with the guidance on expulsions in deciding whether or not there were grounds for expulsion.
  - Whether or not there are any procedural flaws in the investigation or in the appeal procedure which make the expulsion decision or appeal procedure so flawed that important factors were not considered and justice was clearly not done.
  - The fairness or proportionality of the punishment meted out on this student in relation to the treatment of other students involved in the same incident
  - Whether or not there has been race or disability discrimination that would render the decision to expel or the appeal procedure unlawful or discriminatory. The Committee must look at the guidance set out in the Race Relations Act (as amended) and published by the CRE and the information published by the DRC and its Code of Practice.
- d) In deciding whether or not to uphold the expulsion, the Committee has to look at the interest of the appellant and balance this against the interests of other members of the College community

## **7. THE DECISION**

- a) Once all evidence has been given, and all parties have been given an opportunity to sum up (the Appellant always having the last word in a summation), the Chairman should ask all non-members of the Committee to leave the hearing so that the Disciplinary Committee may consider the evidence.
- b) The Clerk may remain with the Committee, but may not be part of the decision making process. The Clerk should take minutes of the proceedings, the attendance, the deliberations, the voting and the

decision. The minutes are not public documents but should be retained for at least 6 years, as they may be required by a Court or other tribunal.

- c) The Legal Advisor to the Committee (if separate) may also be present during the deliberations but must only give legal advice on the issues raised by the hearing and must not take part in any deliberations or decision making. It would be reasonable practice for the Legal Advisor to give any advice to the Committee needed during the course of the hearing openly before all parties.
- d) The decision of the Committee may be taken by a majority. Details of the voting shall be recorded but shall not be given to the parties (eg the parties may not be told if the decision was by a majority or otherwise, or of any opinion of the minority).

## **8. AFTER THE HEARING**

- a) The Committee should write to all parties giving their decision and the reasons for it (which should be detailed enough so that all parties can understand why a particular decision has been reached) within 3 working days of the hearing. The letter should be signed or approved by the Chairman of the Committee before being sent out.
- b) The Committee should also ensure that in setting out its decision, it makes it clear that it is its own decision. Should it uphold the judgement of the Principal, it should be clear that it is because expulsion or suspension is, in the judgement of the Committee, the most appropriate outcome.
- c) The Committee cannot review or revisit its decision once it has been made.
- d) The Committee's decision is binding on all parties. If the Committee directs reinstatement, it should immediately inform the Principal of that decision and specify the date upon which the student should be readmitted, which should, in all but exceptional circumstances, be immediately.