

Disciplinary Policy (Students)

Equality Impact Assessment: Askham Bryan College recognises the importance of the Equality Act 2010 and its duties under the Act. This document has been assessed to ensure that it does not adversely affect staff, students or stakeholders on the grounds of any protected characteristics.

1. INTRODUCTION

The College seeks to maintain a safe, harmonious and enjoyable community in which all students can learn and achieve to their individual potential free from discrimination, harassment and disturbance. The College seeks to protect its community by promoting appropriate behaviour in its student body. The College considers all students to be capable of managing their own behaviour as adults and seeks to achieve this by promoting respect, fairness and appropriate behaviour at all times. The College seeks to treat students as adults and in return expects them to be responsible for their own actions. In the rare cases where students do not behave appropriately, the College will seek to manage behaviour and encourage improvement using this policy.

1.2. Jurisdiction of the College Disciplinary Procedure

This disciplinary policy and procedure apply to any breaches of College policies or the Student Code of Conduct committed by a student*.

All students must comply with the Student Code of Conduct and College policies at all times when on College premises or at any location that education, enrichment, pastoral services or work experience is being undertaken and being overseen by the College. This includes trips, visits, work placements, on transport arranged by the College or in any other place or on an activity organised by the College.

Residential students must comply with the Student Code of Conduct, College policies and the terms of their Accommodation Agreement at all times. A student is considered to be resident if they have a room allocated at the College.

It should be noted however that, dependent on the circumstances, the College reserves the right to implement this policy where students are involved in incidents that breach any College policy or the Student Code of Conduct, whether they occur on or off any of our sites.

** A student is defined as a person who is currently enrolled on a programme of study at any level and in any mode of attendance at the College.*

Version: August 2021	Next Review: August 2022	Author: Assistant Principal (Students)	SLT Owner: Assistant Principal (Students)
----------------------	--------------------------	---	--

DISCIPLINARY POLICY (STUDENTS)

1.3 Students with learning difficulties or disabilities

Where a student has a learning difficulty or disability and has a formally agreed support plan e.g. EHCP, then the College will ensure that the student's needs are taken into consideration. This *may* result in reasonable adjustments to the disciplinary procedures but will not remove the need for disciplinary action. The College may ultimately decide that the Fitness to Study or Fitness to Practise Policies are more appropriate, dependent on the circumstances of the case. The staff member who would be responsible for chairing a disciplinary hearing commensurate with the severity of the incident in question will decide the most appropriate pathway and will ensure that relevant staff e.g. Learning Support and/or Student Services are informed /involved in the process.

1.4. When the Disciplinary Procedure cannot be used

The disciplinary procedure cannot be used in the following cases:

- If the allegation relates to an incident which is currently subject to police investigation or for which a student is being prosecuted. In this case College will cease to investigate the incident as part of the disciplinary process until either the police investigation is complete and/or any legal proceedings have concluded; or
- If there is doubt over the student's 'fitness to study'. In this case the matter should be dealt with under the College Fitness to Study Policy.

2. GUIDING PRINCIPLES

The following guiding principles should guide decision and outcomes of this policy.

2.1. Behaviour change

The stated purpose of this policy is to ensure appropriate behaviour. Therefore, the purpose of the outcomes should be to change inappropriate behaviour into appropriate behaviour.

2.2. Escalation of response

Should a student fail to modify their behaviour or demonstrate further inappropriate behaviours the response of the College will escalate in terms of disciplinary level and sanction.

2.3. Proof and Evidence

The burden of proof expected under this policy is that the Chair (alone) will determine, based on the evidence provided, whether it is reasonable to determine that the allegation(s) should be upheld.

Version: August 2021	Next Review: August 2022	Author: Assistant Principal (Students)	SLT Owner: Assistant Principal (Students)
----------------------	--------------------------	---	--

DISCIPLINARY POLICY (STUDENTS)

It is NOT College policy to issue copies of the evidence/any witness statements/accompanying documents to any of the attendees prior to or subsequent to the meeting.

2.4. Mitigation of behaviour

As a general principle students are responsible for their own actions and behaviours unless they can evidence otherwise (please see also 1.3 above).

Students may seek to mitigate their behaviours but the following approaches are not acceptable:

- Mitigation through incapacity due to intoxication as the result of alcohol / drugs/ other substances, except in exceptional circumstances i.e.
 - The student is adapting to new or changing doses of prescription medication under medical direction AND disorientation or mood change is a known side effect of such medication AND the student has followed medical advice fully in taking the medication;
 - The student can prove that they did not knowingly ingest the substance(s) in question;
- Mitigation due to lack of knowledge of College policy. Students may not contest a lack of knowledge or understanding of the following policies as these are explicitly discussed and explained at enrolment and/or induction:
 - All relevant H&S policies / instructions
 - Safeguarding Policy;
 - Attendance (re grounds for absence);
 - College Charter and Student Code of Conduct;
 - Disciplinary Policy;
 - Screening and Searching for Weapons Policy;
 - Residential Rules;
 - Drugs, Alcohol and other Intoxicating Substances (Students) Policy;
 - Equality, Diversity and Inclusion Policy;
 - Peer on Peer Abuse Policy.
- Mitigation due to provocation; or
- Mitigation due to peer pressure.

2.5. Joint Venture

If a group of students were present during an incident of misconduct hold joint responsibility for that misconduct unless:

Version: August 2021	Next Review: August 2022	Author: Assistant Principal (Students)	SLT Owner: Assistant Principal (Students)
----------------------	--------------------------	--	---

DISCIPLINARY POLICY (STUDENTS)

- A single culprit is identified by the students involved;
- A student present can evidence their own actions to prevent the misconduct; or
- A student can prove that they were not present during the incident.

Any punitive outcomes for students involved in joint venture will be set at same level of severity; however, students may receive disciplinary at different levels depending on their disciplinary history (see escalation of response).

2.6. Confidentiality

The outcome of disciplinary meetings is a confidential issue between the College and the student (and their parents/carers if the student was under the age of 18 at the beginning of the academic year during which the disciplinary takes place or in the case of 'vulnerable' students – see 2.11). The College will not disclose the detail of disciplinary meetings to third parties. In references, the College will only reveal that disciplinary action against a student had occurred, not the reason for the disciplinary, its level, its outcome or any sanctions imposed.

2.7. Negligence

All members of the College community have a duty to make best efforts to prevent breaches in College policy, protect College property and assets, and ensure that all members of the College community are safeguarded, protected from physical harm, protected from harassment, and treated equally. Intentional failure to act or inaction itself in an appropriate way in support of this duty is considered negligence.

2.8. Staff actions which subvert or obstruct the disciplinary process

Should a staff member attempt to subvert, obstruct or disrupt the disciplinary process this will be considered misconduct and the matter will be investigated according to College policy.

2.9. Financial Responsibility

In all cases where damage to College property or assets can be attributed to an individual, that individual is liable for the full replacement or repair cost of the asset. Depending on the circumstances, the College reserve the right to report incidents of damage to the police as criminal damage. In the event of a group venture and where members of the group can be identified, should it be unclear which individual in a group was responsible for the damage the cost of replacement or repair will be shared equally between the members of the group (see 2.6 Joint Venture).

2.10. Currency of a policy breach

New policies or changes to policy cannot be retrospectively applied to a student's historic behaviour.

Version: August 2021	Next Review: August 2022	Author: Assistant Principal (Students)	SLT Owner: Assistant Principal (Students)
----------------------	--------------------------	---	--

DISCIPLINARY POLICY (STUDENTS)

Whilst there is no time limit on bringing a disciplinary for breach in policy, the College will endeavour to deal with policy breaches within the academic year in which they occurred.

2.11 Parental involvement/involvement of third parties

As a general rule, we encourage parents/carers to be involved in any disciplinary processes. This means that the parent/carers and other external agencies who are supporting:

- students under 18 or;
- students who have turned 18 during the academic year or;
- ‘vulnerable’ students – i.e. students who have learning difficulties or disabilities and who are in receipt of an EHCP or High Needs Funding or vulnerable adults
- students who are supported by a social worker, such as Looked After Children, care leavers, students who are the subject of a child protection plan

will always be informed of formal disciplinary actions being taken involving their children – for further details see section 4 below. We will also ensure that relevant staff e.g. Learning Support and/or Student Services are informed /involved.

3 BEHAVIOUR THAT MAY LEAD TO DISCIPLINARY ACTION

3.1. Misconduct

Misconduct by a student is defined as any behaviour, action or activity which contravenes the spirit or letter of:

- Any College policy;
- The Student Code of Conduct;
- The residential rules/terms of the Accommodation Agreement;
- Any verbal or written agreement between the College or an officer of the College and the student.

3.1.1 Stage 1 – Informal Warning

Depending on the severity/significance of the misconduct in question, College reserves the right to deal with a ‘first offence’ at Stage 1, i.e. the outcome of which, if upheld, is an informal warning.

Misconduct by a student who is already subject to an informal warning will be considered under the formal disciplinary procedure.

3.2. Examples of misconduct

Further examples of misconduct include:

Version: August 2021	Next Review: August 2022	Author: Assistant Principal (Students)	SLT Owner: Assistant Principal (Students)
----------------------	--------------------------	---	--

DISCIPLINARY POLICY (STUDENTS)

- Failure to comply with conditions/sanctions relating to a previous disciplinary or informal warning;
- Increasing the risk of harm or causing harm to themselves, the public or other members of the College community due to the breach of ANY College policy but particularly:
 - Health and Safety concerns or a breach of the Health and Safety Policies or any Policies relating to weapons
;
 - Safeguarding concerns or a breach of the Safeguarding Policy;
 - A breach of the Equality and Diversity Policy; or
 - A breach of the Peer on Peer Abuse Policy.
- Increasing the risk of harm to or causing harm to the College's reputation;
- Causing damage to or the destruction of the College's property or assets (including livestock/animals);
- Using College property or assets in a way not sanctioned by the College;
- Removing or withholding assets from the College without permission;
- Significant or repeated breach of any College policy;
- Acts that could be considered illegal (in that a criminal offence may have been committed and is not subject to further legal processes); and
- Acts that are criminal (in that an offence has been committed and legal process has been commenced / completed).

A student alleged to have committed serious or repeated misconduct will be dealt with under the formal disciplinary procedure, i.e. at Stages 2 to 4, dependent on the severity of the behaviour. Subsequent misconduct will always be dealt with at a higher level than any current formal disciplinary

3.3. Lifespan of Disciplinary Action

For the purposes of this policy previous formal disciplinarys are considered current if:

- at Stage 1 or 2 they were within the current academic year;
- at Stage 3 they were within 2 subsequent academic years; or
- at Stage 4 if they were within 3 subsequent academic years.

3.3.1. Where a student has received an upheld Stage 3 or 4 disciplinary, their application to progress or return to College and / or into accommodation the next academic year will be referred to the Admissions Panel.

Version: August 2021	Next Review: August 2022	Author: Assistant Principal (Students)	SLT Owner: Assistant Principal (Students)
----------------------	--------------------------	---	--

DISCIPLINARY POLICY (STUDENTS)

4. DISCIPLINARY MEETINGS

Invitations to formal disciplinary meetings will be made in writing. For those students listed in paragraph 2.11 above, parents/carers /external agencies as appropriate will always be invited to disciplinary hearings at Stages 3 and 4. The parents/carers /external agencies as appropriate of those will be notified of the outcome of a Stage 2 meeting but will not normally attend a Stage 2 meeting unless the Chair feels that it would be appropriate. The Chair will also ensure that appropriate members of staff are invited to the meeting, including any relevant curriculum staff.

Students at Stage 3 and 4 have the right to be accompanied at the meeting by a representative of the Students' Union or by one other person of their own choosing, other than a member of the legal profession acting in a professional capacity.

5 OUTCOMES OF A DISCIPLINARY MEETING WHERE DECISION IS TO UPHOLD THE DISCIPLINARY

- Stage 1: Informal warning – noted on Promonitor and actions agreed with student
- Stage 2: First written warning plus any supportive outcomes/sanctions set out in a Behaviour Agreement
- Stage 3: Final written warning plus any supportive outcomes/sanctions set out in a Behaviour Agreement
- Stage 4: Possible exclusion, or, where the student is remaining in College any supportive outcomes / sanctions set out in a Behaviour Agreement

All outcomes from any formal disciplinary meeting will be written into a Behaviour Agreement, that the student will be required to sign. (Failure to sign however does not render the Agreement invalid, the content will remain valid). A Behaviour Agreement remains in force until the disciplinary is no longer current.(see 3.3)

It is the responsibility of the Chair to determine the appropriate outcomes for a student where a disciplinary is upheld. The Chair will use the 'tariff' (see College Disciplinary Procedures) to assess the level and nature of sanctions. In the case of Stage 4 meetings, where exclusion has not been chosen as the outcome, the Chair may use their discretion to determine reasonable sanctions appropriate to the offences.

6 CRIMINAL OFFENCES AND CONVICTIONS

6.1. The College has a duty of care to its students and thus it needs to be informed of any alleged criminal activity by its students. If at any time during enrolment on a programme of study at the College a student is questioned by the police in relation to the potential

Version: August 2021	Next Review: August 2022	Author: Assistant Principal (Students)	SLT Owner: Assistant Principal (Students)
----------------------	--------------------------	---	--

DISCIPLINARY POLICY (STUDENTS)

committal of a criminal offence or arrested by the police and / or charged with a criminal offence, they are required to report this immediately to the Assistant Principal (Students). If they are sent for trial, the Assistant Principal (Students) must also be kept informed at all stages either by the student or their solicitor. If the student is convicted* of one of more offences, then this must also be reported along with details of any sentence imposed.

** A conviction includes being put on probation, being given absolute or conditional discharge, being bound over or being given a formal caution. It also for the purposes of this policy includes referral orders and guardianship orders. Students need not declare parking, speeding or other offences which are subject to fixed penalties.*

6.2. The College can consider any such offence, wherever and whenever it occurred, as having the potential to bring the College into disrepute under the Student Code of Conduct and commence disciplinary proceedings accordingly, including suspension of the student whilst investigations are undertaken dependent on the nature and seriousness of the offence. College reserves the right to exclude students (either temporarily or permanently) as the result of a criminal conviction classified at the time within the Crown Prosecution Service Table of Offences. College reserves the right to undertake such an exclusion at an Extraordinary Meeting of the Disciplinary Panel that would normally convene for a Stage 4 Disciplinary. Such a meeting would take place in the absence of the student or those who would normally have accompanied them and the student would be notified of the outcome.

7 SUSPENSION

7.1. Suspension must be justified in that:

- If the student continues to attend College that they will pose a clear risk to themselves, the College community or the College's assets;
- If the student continues to attend College that they pose a clear and present Safeguarding or Health and Safety risk to (an)other member(s) of the College community;
- If the student continues to attend College that they pose a substantive risk to the College's reputation; or
- If the student continues to attend College that they are likely to further breach policy or student Code of Conduct and expose themselves to increased disciplinary action.

7.2. Suspension allows the College to remove a student from the College community whilst the College investigates the allegations against the student. Suspension is used to diffuse situations and to protect the student suspended from further allegations AND/OR protect the College community. Suspension is not a punishment and is not used in a punitive way.

7.3. Students who are suspended are not permitted to attend any College premises without the explicit written permission of one of the College Executive team.

Version: August 2021	Next Review: August 2022	Author: Assistant Principal (Students)	SLT Owner: Assistant Principal (Students)
----------------------	--------------------------	---	--

DISCIPLINARY POLICY (STUDENTS)

- 7.4. Suspension is always 'without prejudice' and does not imply any outcome of the disciplinary process.
- 7.5. Please see also the College Peer on Peer Abuse Policy for details of the circumstances under which students may be suspended pending investigations.

8 PROCESS FOR SUSPENSION

- 8.1. Formal suspension can only be recommended by a Director, confirmed in writing once approval from one of the College Executive team has been obtained. Suspensions are normally for no more than 10 working days. Students are encouraged to maintain contact with their Course / Programme Manager whilst suspended and where possible should be given work to complete whilst suspended. Suspensions may be extended (indefinitely) beyond 10 days if a student is under police investigation or criminal charges / legal processes are pending.

9 EXCLUSION

An outcome of exclusion recommended by the Chair of a disciplinary must be approved by the College Executive team. This authorisation may not be delegated.

Exclusion means the student leaves the College immediately and will not be permitted to study at the College for the remainder of the academic year.

Exclusions may be suspended for a period using a Behaviour Agreement.

Exclusions will be confirmed in writing.

10 APPEALS

A student may appeal against the formal disciplinary process only (i.e at stages 2 to 4). If a student fails to attend their disciplinary meeting they forfeit the right to appeal.

10.1. Grounds of Appeal

At the end of a formal disciplinary process the student will be informed that they have the right to appeal. Students may only appeal on the following grounds:

1. New evidence can be brought that demonstrates that the student was innocent. The evidence must not have been considered during the disciplinary, must be factual rather than opinion (hence character references are inadmissible), must be from a reliable (independent) source and must evidence a material change to the extent to which the burden of proof is met.

Version: August 2021	Next Review: August 2022	Author: Assistant Principal (Students)	SLT Owner: Assistant Principal (Students)
----------------------	--------------------------	---	--

DISCIPLINARY POLICY (STUDENTS)

2. That the disciplinary process should not have been used against the student due to health issues. Essentially the student must argue that they should have been dealt with under the Fitness to Study or Fitness to Practise policy instead.
 3. That there has been a procedural irregularity or that the College has acted outside its policy. In which case it is incumbent on the student to identify the procedural irregularity or policy breached by the College.
 4. That punitive sanctions are too harsh. The student must evidence that the punitive sanctions are disproportional or are impacting on them or their family in an unintended or inappropriate way.
- 10.2 Appeals must be in writing and must include the grounds of the appeal and any new evidence to be brought to the appeal. Appeals against disciplinaries at Stages 2 and 3 must be addressed to the Chair of the original hearing. Appeals against Stage 4 disciplinaries must be addressed to the Chief Executive's Office. The request for an appeal will be passed to a Chair at the next level of the process. Appeals must be made within 5 working days of the date of the letter advising of disciplinary outcomes
- 10.3 The Chair will consider the appeal and will act depending on the grounds. The Chair has 4 possible outcomes to the appeal The Chair may, *but is not required to*, call the student to a meeting to discuss the appeal. The exception is at Stage 4 where a student has been excluded as a result of the disciplinary process, in which case a student would be invited to attend. The Chair will write to the student and explain the outcome of the appeal against the grounds outlined by the student. *There is no further right of appeal under this policy.*
- 10.4 The Chair considering the appeal can find:
- That the appeal was vexatious or otherwise designed to undermine or frustrate the College disciplinary system. In this case the chair may increase the severity of the punitive measures.
 - Against the appeal in which case the disciplinary outcome and any punitive sanction stands.
 - To partially uphold the appeal. In which case the chair may decrease the severity of the punitive measures.
 - To fully uphold the appeal:
 - In that the finding of the disciplinary was erroneous. In which case the disciplinary is struck from the record in its entirety.
 - OR the College failed to follow policy, in which case the disciplinary is struck from the record in its entirety.

Version: August 2021	Next Review: August 2022	Author: Assistant Principal (Students)	SLT Owner: Assistant Principal (Students)
----------------------	--------------------------	---	--

DISCIPLINARY POLICY (STUDENTS)

- OR that the student should not have been subject to the disciplinary policy due to being unfit to study. In which case the disciplinary is struck from the record in its entirety AND the student will be referred to Fitness to Study procedures.

11 APPEAL AGAINST EXCLUSION

11.1 Timescale for Appeal

Notice of appeal must be lodged with the Chief Executive's office within five working days of the date of notification of exclusion and must give the grounds and brief particulars of the appeal. The recommendation will not be considered until the expiry of the period for lodging the appeal.

11.2 Hearing Appeals

A member of the Executive Team only can hear an appeal against a Chair's recommendation for permanent exclusion of a student.

11.3 Appeal Meetings

If a notice of appeal is lodged within the time allowed, an appeal meeting Chaired by a member of the Executive Team will be arranged to take place (normally) within fifteen working days of the notice of appeal being lodged. The student will be given at least three working days' notice of the time and place of the appeal meeting and will be entitled to be accompanied by a representative of the Students' Union or by one other person of their own choosing, but not by a member of the legal profession acting in a professional capacity. Any documents considered at the disciplinary meeting will be available to the Chair for the purposes of the appeal, together with the notes of the meeting.

At the appeal meeting, the student will be invited to explain the grounds of the appeal and to state his or her case. The Chair of the original disciplinary meeting who made the decision to exclude will be asked to respond to the appeal and explain the reasons for their decision. The Chair of the Appeal meeting may ask questions of the student and the member of staff and will then consider whether to allow or dismiss the appeal. Witnesses will not be asked to attend except possibly in relation to any relevant new evidence which has come to light since the disciplinary meeting.

11.4 Outcomes of Appeal against Exclusion

If the appeal is allowed, the Chair of the Appeal meeting may decide that alternative disciplinary sanctions should be taken. The Chair may also decide that no further disciplinary action should be taken.

Version: August 2021	Next Review: August 2022	Author: Assistant Principal (Students)	SLT Owner: Assistant Principal (Students)
----------------------	--------------------------	---	--

DISCIPLINARY POLICY (STUDENTS)

If the appeal is dismissed, the original recommendation of the disciplinary Chair will stand. Within five working days of the appeal meeting, the decision of the Chair will be confirmed in writing to the student. There is no further right of appeal under this policy.

12 FUTURE ENROLMENT AT THE COLLEGE

12.1 All students whose misconduct results in a disciplinary upheld at Stage 3 or 4 will be referred to an Admissions Panel on re-application to the College, i.e on application to progress either onto a new programme or to progress onto a subsequent year of the same programme. The Admissions Panel may choose to impose conditions on a student's re-enrolment OR refuse enrolment at the College altogether. The Admissions Panel will also consider where appropriate any application to return into accommodation by these students, particularly but not exclusively if their disciplinary is related to behaviour whilst in residence.

12.2 Any student who is subject to exclusion will not be permitted to re-enrol at the College within 3 years without the explicit -recommendation by the Admissions Panel and subsequent approval of a member of the Executive team .

13 COMPLAINTS RELATING TO DISCIPLINARY ACTION

Any complaint relating to disciplinary action, and the actions of Chairs or staff during its implementation should be made through the College complaints procedure. Complaints or the threat of complaints will have no bearing on, nor delay the disciplinary process. Such complaints can only be investigated after the outcome of any appeal has been finalised.

14. LINKS TO OTHER DOCUMENTS

Disciplinary Procedures (internal document only)
Complaints Policy
Peer on Peer Abuse Policy
Drugs, Alcohol and other Intoxicating Substances (Students)
Screening and Searching Students for Weapons
Fitness to Study Policy
Fitness to Practise Policy

15. REVIEW AND MONITORING

The Assistant Principal (Students) will review the policy on an annual basis.

Version: August 2021	Next Review: August 2022	Author: Assistant Principal (Students)	SLT Owner: Assistant Principal (Students)
----------------------	--------------------------	---	--