

## Student Disciplinary Policy SCA2

**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 SCOPE AND PURPOSE

#### 1.1. 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 policy or the Student Code of Conduct committed by a student\*.

The student 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, transport arranged by the College or any other place or 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 whilst resident at the College regardless of location. A student is considered to be resident if they have a room allocated at the College on the particular day in question.

*\* 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.*

#### 1.3. When the Disciplinary Procedure cannot be used

The disciplinary procedure cannot be used in the following cases:

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- 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 student should be referred to 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.

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. Students are adults, should expect to be treated as adults and have the responsibilities of adults within the College community. If a student is not capable of responsibility for their own actions due to health or mental health reasons they will be dealt with under the Fitness to Study (SCA36) or Fitness to Practise (SCA39) Policy.

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;

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- 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 (students will have signed documents accepting these policies):
  - All H&S policy including department level operating manuals;
  - Safeguarding Policy;
  - Attendance Policy;
  - Student Code of Conduct;
  - Disciplinary Policy;
  - Weapons Policy;
  - Residential Rules;
  - Drugs and Alcohol Policy;
  - Equality Policy; or
  - Bullying and Harassment 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:

- 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 disciplinarys 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). 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

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harassment, and treated equally. Intentional failure to act 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 accordingly 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. 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 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.

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.

## **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.
- Any verbal or written agreement between the College or an officer of the College and the student.

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 under informal warning will be considered under the formal disciplinary procedure.

### **3.2. Examples of misconduct**

Further examples of misconduct include:

- Failure to comply with supportive or punitive sanctions relating to a previous disciplinary or informal warning;

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- Increasing the risk of harm or causing harm to themselves, the public or other members of the College community due to:
  - Health and Safety concerns or a breach in Health and Safety Policy or Weapons Policy;
  - Safeguarding concerns or a breach in Safeguarding Policy;
  - A breach in the Equality and Diversity Policy; or
  - A breach in the Bullying and Harassment 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);
- 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 disciplinaries are considered current if:

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

## **4 PROCEDURES**

Full details of disciplinary procedures can be found in the associated Procedure document SCA2b.

### **4.1. Disciplinary meetings**

Invitations to formal disciplinary meetings will be made in writing. If the student is under 18 or has turned 18 during the academic year, the parent / carer of the student will be notified of the outcome of meeting but will not normally attend at 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.

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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 2: First written warning plus any supportive outcomes / sanctions / suspended sanctions
- stage 3: Final written warning plus any supportive outcomes / sanctions suspended sanctions
- Stage 4: Possible exclusion (temporary or permanent), plus any supportive outcomes / sanctions / suspended sanctions

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

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 SCA25b) 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 arrested by the police and charged with a criminal offence, they are required to report this immediately to the Director of Student Services. If they are sent for trial, the Director of Student Services must also be kept informed at all stages either by the student or their solicitor. If the student is convicted\* 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. 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 bringing 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 / their

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representatives and the student would be notified of the outcome.

- 6.3.** A criminal offence that occurred on College premises which would breach College policy or would prevent a student from continuing on their course will be the subject of disciplinary action by the College.

## **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 a Senior Postholder.

**7.4.** Suspension is always 'without prejudice' and does not imply any outcome of the disciplinary process.

**7.5.** Please see also SCA9 on Bullying and Harassment for details of the circumstances under which students may be suspended pending investigations.

## **8 PROCESS OF SUSPENSION – PLEASE SEE SCA2B**

**8.1.** Formal suspension can only be authorised by a Senior Postholder, confirmed in writing. Suspensions are normally for no more than 10 working days. Students are encouraged to maintain contact with their 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**

Exclusion may be permanent or temporary. In either case exclusion must be authorised by a Senior Postholder. This authorisation may not be delegated.

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Permanent 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.

A temporary exclusion means the student may not attend the College for a pre-determined period. During their exclusion the student is not permitted any contact with or access to the College.

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

Exclusions will be confirmed in writing.

### **10 APPEALS**

A student may appeal against the formal disciplinary process. If a student fails to attend their disciplinary meeting they forfeit the right to appeal on the grounds of new evidence or harshness of punitive sanctions.

#### **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 balance of probability.
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. Process of Appeal against the disciplinary outcome including exclusion – see SCA2b**

### **11 FUTURE ENROLMENT AT THE COLLEGE**

All students whose misconduct results in sanctions at Stage 3 or 4 will be referred to Admissions Panel on re-application to the College. The Admissions Panel may choose to impose supportive 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.

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Any student who is subject to exclusion (permanent or temporary) will not be permitted to re-enrol at the College within 3 years without the explicit permission of a Senior Postholder and Admissions Panel.

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**12 COMPLAINTS AGAINST THE DISCIPLINARY POLICY OR PROCEDURE**

Any complaint against the disciplinary procedure, policy, 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 any appeal has been finalised.

**13 LINKS TO OTHER POLICIES, PROCEDURES, STRATEGIES AND DOCUMENTS**

SCA2b            Disciplinary Procedures  
QA7             Complaints Policy  
SCA9            Bullying and Harassment Policy

**14 REVIEW AND MONITORING**

The Director of Student Services will review the policy on an annual basis.

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