



EXCLUSION FOR MISCONDUCT

1. INTRODUCTION

1.1 The principles behind and purposes associated with the Exclusion Policy are:

- 1.1.1 to create the mechanism for appropriate disciplinary measures in the event of misconduct of a serious nature;
- 1.1.2 to ensure procedural fairness and natural justice;
- 1.1.3 to enhance co-operation between the College and parents/guardians when it is necessary for pupils to be excluded.

2. TERMINOLOGY

2.1 Pupils may be excluded from the College for a number of reasons, including those which are educational, medical, financial or disciplinary (misconduct). The issues below refer primarily to exclusion for misconduct.

- 2.1.1 Suspension means the exclusion of pupils as a precautionary measure, for a short period, usually not exceeding 48 hours, to allow for an investigation of a disciplinary matter to be carried out. During Suspension, arrangements will be made for the pupils to receive work and submit completed work for marking.
- 2.1.2 Rustication means the exclusion of pupils as a punishment and for a finite period, after which they will be reinstated.
- 2.1.3 Removal means the requirement of parents/guardians that they remove pupils from the College. However, the College will continue to provide such support that it is reasonably able to and the pupil will be permitted to visit as an Old Malvernian after a period has elapsed. Removal may follow a serious breach of discipline. It may also be applied to very different circumstances, such as pupils making insufficient progress.
- 2.1.4 Permanent Exclusion means the formal and permanent exclusion of pupils.

3. MISCONDUCT

3.1 The main but not exhaustive categories of misconduct, which may result in pupils being excluded from the College include:

- 3.1.1 supply/possession/use of alcohol or tobacco, or illegal drugs or solvents, or their paraphernalia, or substances intended to resemble them;
- 3.1.2 theft, blackmail, physical violence, intimidation or bullying;

- 3.1.3 misconduct of a sexual nature, including the supply or possession of pornography;
- 3.1.4 possession or unauthorised use of firearms, bladed items (knives) or other weapons;
- 3.1.5 vandalism, including computer hacking;
- 3.1.6 conduct showing hostility towards others on grounds of race, nationality, gender, disability, sexual orientation, religion, faith or age;
- 3.1.7 persistent disregard of the College Rules, aims or ethos;

- 3.1.8 other serious misbehaviour, either on or off the premises, which may bring the College into disrepute; and
- 3.1.9 failure to behave reasonably in academic matters.

4. OVERVIEW

- 4.1 Incidences of serious alleged misconduct will be investigated by a senior member of staff, typically the Deputy Head.
- 4.2 If the Deputy Head considers that a pupil's conduct could result in Suspension, Removal or Expulsion, he/she will liaise with the pupil's Housemaster/Housemistress to ensure that the pupil's parents are kept informed.
- 4.3 The pupil may have a member of staff of his/her choosing accompany him/her to any meetings or hearings during the disciplinary process.
- 4.4 The Headmaster conducts the disciplinary hearing in the presence of the pupil. If the Headmaster considers the matter to be sufficiently serious to warrant a penalty greater than Rustication, the Headmaster will contact the pupil's parents before taking that decision.
- 4.5 Parents/guardians may appeal against a Permanent Exclusion. A panel of the College Council who have not had any part in the proceedings hitherto will be appointed by the Chairman to consider the appeal.
- 4.6 Other agencies may be notified at any stage of the procedure, as and when necessary and appropriate.
- 4.7 In the absence of the Headmaster or Deputy Head, the person deputising in that role will undertake actions identified in the procedure.

5 THE INITIAL DISCIPLINARY PROCEDURE

- 5.1 Conducting the Investigation. In the event of a report of misconduct (or suspicion thereof) occurring, an investigation will be conducted by a senior member of staff. This may include:
 - 5.1.1 gathering evidence;
 - 5.1.2 interviews with pupils, members of staff and others;
 - 5.1.3 segregation of pupils pending a hearing; and
 - 5.1.4 liaison with parents/guardians and, where appropriate or where there is a legal requirement, other agencies (e.g. police, social services).

- 5.2 Searches. In gathering evidence apart from interviews, searches of pupils' rooms and belongings will only be conducted with their permission and in their presence, unless a search without their consent is deemed necessary, for example in order to protect others or to prevent disorder, criminal activity, or destruction of evidence.
- 5.3 Segregation. It may be necessary to segregate pupils. For the purposes of reliable segregation, the School may confiscate a pupil's mobile telephone for such a period as it reasonably deems necessary.
- 5.4 Suspension. If the senior staff member conducting the investigation considers that Suspension is necessary he/she will inform the Deputy Head who will contact the pupil's parents/guardians. The pupil and his/her parents/guardians will be informed of the nature and basic facts of the allegation of misconduct and the reasons for the Suspension. The Deputy Head may impose on a pupil a single Suspension of up to 48 hours. Any further or longer Suspension can only be imposed by the Headmaster usually following contact by telephone with the parents/guardians and an explanation to the pupil.
- 5.5 Following the initial investigation, the senior staff member conducting the investigation will consider whether the alleged misconduct may lead to Rustication, Removal or Permanent Exclusion and if so, he/she:
 - 5.5.1 will ensure that the pupil's Housemaster/mistress is informed of the allegation against the pupil, the facts giving rise to the allegation and that Rustication, Removal or Expulsion may be the outcome;
 - 5.5.2 if the Deputy Head has not conducted the investigation, ensure that the Deputy Head is informed of the allegation against the pupil and the facts giving rise to the allegation;
 - 5.5.3 will ensure that the pupil is informed of the allegation against him/her, the facts giving rise to that allegation, that the Headmaster will consider the allegation and that he/she may have a member of staff with him/her during the hearing before the Headmaster;
 - 5.5.4 will notify the Headmaster's office that a disciplinary hearing is required, giving the pupil's name, the allegation against the pupil and the facts giving rise to the allegation.
- 5.6 When it is considered that the investigation has been completed, but before a hearing before the Headmaster takes place, the Deputy Head shall review the investigation, considering the following questions in particular:
 - 5.6.1 Are further enquiries needed?
 - 5.6.2 Would an objective bystander consider the manner of the investigation fair?
 - 5.6.3 What is the pupil's disciplinary record in the School?
 - 5.6.4 Is it appropriate to hold a hearing with the prospect of Removal/Permanent Exclusion before the pupil?

- 5.7 The Housemaster/mistress will contact the pupil's parents/guardians before the pupil's meeting with the Headmaster and inform them of the allegation against the pupil, the facts giving rise to the allegation and that the allegation is to be considered by the Headmaster because Rustication, Removal or Permanent Exclusion may be the outcome. The Housemaster/mistress will ensure that the pupil's parents/guardians are kept informed of the progress of the matter.

6 THE DISCIPLINARY HEARING

- 6.1 The Headmaster will conduct the disciplinary hearing in a manner appropriate to the age, maturity and understanding of the individual pupil concerned. This will include considering whether the pupil should have a member of staff present to support the pupil and offer assistance during the hearing.
- 6.2 A note will be taken of the disciplinary hearing and any subsequent sanction meeting.
- 6.3 The pupil should be present throughout the disciplinary hearing, which will usually involve:
- 6.3.1 The Deputy Head setting out the allegation, the facts giving rise to the allegation and the investigation undertaken.
 - 6.3.2 Questions from the Headmaster to the Deputy Head about the investigation.
 - 6.3.3 The pupil having the opportunity to respond to the allegation against him/her, including the opportunity to provide his/her account of events and, if appropriate, ask the Deputy Head or Headmaster to speak with other pupils or witnesses.
 - 6.3.4 Questions from the Headmaster to the pupil about allegations and/or the pupil's response/account of events.
- 6.4 The Headmaster may at any time suspend or postpone the hearing for any reason, which will be explained to the pupil.
- 6.5 The Headmaster will decide whether the allegation against the pupil has been proved on the balance of probabilities (ie whether it is more likely than not).
- 6.6 If the Headmaster having considered the evidence including any admission by the pupil, decides that the allegation against the pupil is proved, he will consider what sanction is to be imposed and inform the pupil in accordance with the following.
- 6.6.1 A sanction other than Rustication, Removal or Permanent Exclusion may be imposed immediately.
 - 6.6.2 If the Headmaster considers that the misconduct may warrant Rustication but not Removal or Permanent Exclusion, he will hold a meeting with the pupil at which the Rustication will be imposed and the reasons for its imposition given.

6.6.3 If the Headmaster considers that the misconduct may warrant Removal or Permanent Exclusion, he will hold a sanction meeting in accordance with the provisions below.

6.7 The parents/guardians will be informed of the outcome of the disciplinary hearing and either informed of the sanction imposed or invited to a sanction meeting. Where a meeting has taken place, the parents/guardians will receive written confirmation of the facts of the misconduct and the sanction imposed.

7 THE SANCTION MEETING

7.1 Given the seriousness of the misconduct, in most cases where a sanction meeting is to be held it will be appropriate for the pupil's parents/guardians to attend the sanction meeting and for the pupil to be temporarily suspended until the sanction meeting. The Headmaster will inform the pupil that a sanction meeting is to be held and (if a Suspension is imposed) that the pupil is suspended until that meeting.

7.2 The sanction meeting will usually be held within 3 working days of the conclusion of the disciplinary hearing.

7.3 The pupil and the pupil's parents/guardians will be informed in writing of:

7.3.1 the date, time and place of the sanction meeting and the College's expectation that they or the pupil's guardian should attend (if possible);

7.3.2 the findings of the disciplinary hearing conducted by the Headmaster;

7.3.3 any relevant previous disciplinary issues concerning the pupil;

7.3.4 any other favourable or unfavourable conduct known to the School which will be taken into account;

7.3.5 the purpose of the sanction meeting and who will be attending;

7.3.6 the availability of copies of this policy (enclosing a copy if appropriate).

7.4 The pupil and/or the pupil's parents/guardians may write to the Headmaster setting out any factors they wish to have considered at the sanction meeting. Any such letter should be sent to arrive at the Headmaster's office at least the working day before the sanction meeting.

7.5 The pupil and parents/guardians may be accompanied by a friend or member of staff, and the Headmaster (or his nominee) may similarly be accompanied. If either the pupil, the parents/guardians or the Headmaster wish to be accompanied, he/she/they should notify the others of by whom they will be accompanied at least 24 hours before the meeting.

7.6 A senior member of staff will attend the meeting to note the events and to prepare a record of the main points discussed.

7.7 The sanction meeting will be conducted by the Headmaster and will usually follow the following format:

- 7.7.1 an explanation of how the meeting will be conducted and the role of those present;
 - 7.7.2 a description of the offence and the disciplinary sanction(s) that could be imposed;
 - 7.7.3 a summary of the evidence which will include an account of the version of events given by the pupil;
 - 7.7.4 an opportunity for the pupil and his/her parents/guardians to be heard and ask questions about the disciplinary hearing;
 - 7.7.5 an opportunity for the pupil and his/her parents/guardians to address the Headmaster on the issue of the sanction to be imposed; and
 - 7.7.6 an explanation of the appeal procedure that applies if Permanent Exclusion is the outcome.
- 7.8 The Headmaster may adjourn the meeting for a short period before notifying the pupil and parents/guardians of the decision.
- 7.9 The decision will always be confirmed in writing, normally within 3 working days of the Sanction Meeting. The letter will state the decision in relation to the allegation (or each of them), the sanction, when it takes effect, the reasons and (where appropriate) to whom the pupil and/or the parents/guardians may request an appeal against the decision, together with the deadline to do so. The letter may also offer support, if appropriate.
- 7.10 The Headmaster will notify the Chairman of Council of the decision to exclude permanently or require the removal of a pupil, at the appropriate time.

8 APPEALS

- 8.1 Where a pupil has been permanently excluded or where a parent/guardian has been required to remove a pupil, the parent/guardian may appeal against the decision. Pending such appeal, the pupil shall remain suspended from the School.
- 8.2 The appeal will be conducted by a panel of members of the College Council who have not been involved in any way with the investigation or sanction procedure.
- 8.3 The grounds for appeal are:
- 8.3.1 whether the facts of the case, so far as they relate to the pupil, were sufficiently established, the standard of proof being the balance of probabilities;
 - 8.3.2 whether relevant procedures were followed; and
 - 8.3.3 whether the sanction was wholly disproportionate to the offence or other events that were found to have occurred, having regard to the College Rules.
- 8.4 It is important for all those concerned to understand that, save in the most exceptional of circumstances, the Appeal Panel will not hear any new evidence: it will only consider the material that was before the Headmaster at the disciplinary hearing.

9 THE APPEAL PROCEDURE

- 9.1 Initiating the appeal. A request for an appeal must be in the form of a formal written application faxed or delivered to the Clerk to the Council or the Headmaster within three working days of the written notification of the decision to exclude or remove a pupil.
- 9.2 Content of the appeal application. In their application, parents/guardians must state the grounds upon which they are appealing.
- 9.3 Timing of the Appeal Hearing. Unless there are exceptional circumstances, the appeal will take place within 10 working days of notification of the decision, and the sooner the better if convenient to all parties.
- 9.4 Administration of the appeal. The Clerk to the Council will be responsible for the administration of the appeal. The parents/guardians and the Headmaster are responsible for ensuring that they provide copies of the material upon which they rely. The Clerk to the Council will ensure that all present at the appeal will be supplied beforehand with copies of any relevant documentation.

10 THE APPEAL HEARING

- 10.1 Location. The Appeal Hearing will normally take place at Malvern College.
- 10.2 Attendance at the hearing.
 - 10.2.1 The hearing is a private hearing, and its proceedings are to be regarded by all parties as confidential, subject to law. Those present will normally be: the Appeal Panel, headed by a designated Chairman, the Headmaster, the parents/guardians and the pupil concerned (if the parents/guardians wish).
 - 10.2.2 The parents/guardians and pupils concerned may be accompanied by a friend or by a member of the College staff if desired. The Headmaster may also ask a further member of staff to attend. No legal representation on either side is considered appropriate.
- 10.3 The proceedings will be conducted in an informal manner. All statements made at the hearing will be unsworn. All present will be entitled to write their own notes. The main points of the proceedings will be recorded by a secretary.
- 10.4 Conduct of the hearing. The Appeal Chairman may determine the procedure for the hearing, including adjourning the hearing. The Appeal Chairman will explain to the parties his/her proposed procedure for the hearing.
- 10.5 Conduct at the hearing. All those attending the hearing are expected to show courtesy, restraint and good manners. The Appeal Chairman may, at his discretion, adjourn or terminate the hearing if these expectations are not met.
- 10.6 Anonymity. If the Headmaster considers it necessary, in the interests of an individual or of the School, that the identity of any person should be withheld, the Appeal Chairman may require that the name of that person and the reasons for withholding it be written down. The Appeal Chairman may, at his discretion, direct that the person be identified or not as the case may be.

Concluding the hearing. When the Appeal Chairman considers that all the issues have been sufficiently discussed, he will adjourn the hearing whilst a decision is made. The Appeal Chairman and Panel will have regard to the matters contained in 8.3 above and determine whether the original decision should stand or, if not, whether any lesser sanction should be imposed.

10.7 The Appeal Chairman will consult with the Appeal Panel and this decision will be final. It will be confirmed to the Headmaster, the parents/guardians and to the pupil(s) concerned as appropriate, by the Appeal Chairman by letter, normally within three working days of the hearing being concluded.

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