



**Regionally Focused – Globally Engaged**

# **Student Appeal Procedure**

**May 2022**

## History of Changes

| Version | Description of Change   | Authored by | Date           |
|---------|---|-------------|----------------|
| 1.1     | Minor rewording from the 2012 version. No change to the substance of the procedure                | D Killean   | 6/08/2014      |
| 1.2     | Updated to include the use of the new Equality Impact Assessment tool in assessing this procedure | D Killean   | 17/05/2016     |
| 1.3     | Updated for gender neutral pronouns   | J Robertson | September 2019 |
| 1.4     | Review of procedure   | J Gracie    | May 2022       |
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## Student Appeal Procedure

### 1. Scope

This procedure is applicable to all students of Borders College.

### 2. Introduction

- 2.1 Several of Borders College's internal procedures (including Student Discipline Policy and Procedural Guidelines) allow for an appeal against the imposition of a penalty or decision, and this procedure should be read as a supplement to those procedures or to any other in which reference is made to the right to appeal.
- 2.2 Throughout this document, the words "appeal panel" should be read as referring either to a group of individuals convened for the purpose of hearing a particular appeal or to one individual hearing an appeal, as set out in the appropriate College procedure. Where an appeal is heard by one individual, that person will carry out the function of the Chair.

### 3. The Purpose of the Appeal

- 3.1 An appeal against a penalty or decision is an opportunity for review. It is not a repeat of the original hearing or decision-making process; its purpose is to identify whether a defect occurred in the original hearing or decision, such that the decision is rendered unsafe or unfair, and to rectify it if it did. Appeals may be made against:
  - 3.1.1 disciplinary sanction.
  - 3.1.2 decision made under another policy or procedure.
  - 3.1.3 suspension/dismissal/exclusion.
  - 3.1.4 the process of an investigation into an allegation such as harassment or bullying.

### 4. Grounds for Appeal

Grounds for Appeal are:

- 4.1 the individual was not given an opportunity to put his or her side of the story across.
- 4.2 internal procedures were not taken into account.
- 4.3 mitigating factors were not taken into account.

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- 4.4 new evidence has come to light which could have affected the original decision if it had been presented at that time.
- 4.5 the penalty is outside the band of reasonable responses.
- 4.6 no reason was given for the decision.

It is not grounds for appeal that the individual disagrees with the outcome of the original decision.

### 5. How to Appeal

Appeals should be made in writing to the appropriate person as set out in the relevant College Policy or Procedure within 10 working days of the decision.

### 6. Who Hears an Appeal?

Appeals will be heard by a panel who were not involved in the original process/decision, as set out in the appropriate College Policy or Procedure.

### 7. What can the Appeal Panel do?

The appeal panel may:

- 7.1 dismiss the appeal, i.e. confirm that the original decision stands.
- 7.2 uphold the appeal, i.e. revoke the original decision.
- 7.3 vary a penalty (but only to a lesser penalty, an appeal panel cannot increase a penalty).
- 7.4 recommend a rehearing (this will be very rare).

### 8. Conduct of the Hearing

- 8.1 The appeal hearing will be conducted in private. The only persons permitted to be present will be the following individuals:
- 8.1.1 A panel Chair will be identified before the hearing begins and will direct the hearing. All communications will be made via the Chair.
  - 8.1.2 Appellant together with his/her representative (if appropriate). The individual making the appeal may be represented/accompanied by a supporter/friend, but not a legal or other professional adviser. Where the appellant has a disability or other special circumstances, e.g. English not being their first language, then the individual is entitled to bring appropriate specialist help/advocacy.
  - 8.1.3 Respondent, being the member(s) of College management involved in making the original decision (and/or any other appropriate individual, adviser, or supporter).
  - 8.1.4 Person appointed to maintain the official record of proceedings.
  - 8.1.5 Witnesses asked to attend by the panel Chair for the purpose of giving evidence.
- 8.2 Documents
- 8.2.1 If the appellant and the respondent wish to refer to any documents during the hearing they should make them available at least five days in advance of the hearing to the Principal's Secretary, who will pass copies on to the other party and the panel. Lists of witnesses should be similarly dealt with. With permission of the panel Chair, documents and/or names of additional witnesses may be submitted during the hearing; in which case reasonable time to read and prepare should be given by the Chair. Documents should be in chronological order.

### 9. The Hearing of the Appeal

- 9.1 The Chair of the panel will open the proceedings by briefly explaining the purpose of the hearing, identifying the individuals present and outlining the process to be followed. The Chair may ask any questions they think appropriate of either side to clarify any issues involved and to help the Chair come to a reasoned decision.

#### 9.2 The Appellant's Case

The appellant will make their case explaining why they are appealing, detailing the evidence, they are bringing and calling witnesses where appropriate.

The respondent may ask questions via the Chair of the panel, to clarify facts and if appropriate to examine the witnesses. The Chair of the panel may also ask questions.

### 9.3 The Respondent's Case

The respondent will reply, giving information to support the original decision. This information should include the background to the situation, a summary of events, the information considered when making the decision, an explanation of how the decision was made and whether the individual has been suspended pending the appeal hearing.

9.4 If witnesses were involved in the original decision, it will not be necessary to bring them again unless they have something new to bring to the proceedings, or where the facts are disputed at the appeal.

9.5 Once the respondent has presented their case the appellant may ask questions via the Chair of the panel, to clarify facts and if appropriate to examine witnesses. The Chair of the panel may also ask questions.

### 9.6 Issues for the Appeal Panel to Consider

- was the appellant given a fair opportunity to state their case?
- have College policies and procedures been carried out correctly?
- was the evidence considered fairly and reasonably?
- was the original decision fair, considering the facts of the case?
- if anything has been overlooked, has it been such as to render the original decision unfair or unreasonable?
- were any mitigating circumstances considered?

It may be necessary for the appeal panel to re-question either party to the appeal, and this may be done in the same way.

### 9.7 The Appeal Panel Decision

Once the two parties have presented their case and the appeal panel feels that sufficient information has been presented for it to come to a reasoned conclusion, the hearing will be concluded and the appeal panel will consider its decision in private. The panel will communicate its decision to the parties as soon as the decision has been made, and will confirm it in writing within seven days of the decision.

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