

Misconduct Procedure

RTO Number 90198

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DOCUMENT HISTORY

Version	Issued	Author	Reason for Change
v1.0	January 2022	RTOEO	New Procedure

Issued by the Executive Manager, NSW Health RTO under the authority of the Chief Executive (CE).

Definitions

Misconduct	Behaviour or conduct which seriously or repeatedly breaches expected standards. The terms 'minor misconduct' and 'substantial misconduct' in the Policy indicate NSW Health RTO's view of the gravity of the impact of the alleged breach of the Policy.
Minor Misconduct	Low level behaviour that is judged by the RTO to be a minimal act or minimal threat to the integrity, honesty and ethical practice.
Substantial Misconduct	Behaviour that is judged by NSW Health RTO to be either/or a: <ul style="list-style-type: none"> - Significant threat to the integrity, honesty and ethical practice. - Behaviour where the student's level of experience might reasonably be interpreted as evidence that the student was aware that the behaviour was not in keeping with standards or practices related to ethical practice. <p>The following instances of alleged misconduct will always be treated as 'substantial misconduct':</p> <ul style="list-style-type: none"> • Once a student has been found to have committed minor or substantial misconduct, any subsequent allegation, unless the student is still in their first session of study and that is judged by the RTO to be a mitigating factor; • All allegations of repeated misconduct in assessment including examinations; and • All allegations of collusion provided students have been given clear instructions about the nature and extent of collaboration that is permissible in group work. • Where a student has committed an act that requires referral to the police. • Where action was undertaken that resulted in an Urgent Situation.
Procedural Fairness	The guiding principles for ensuring a fair and just process. Respondents are provided with an opportunity to respond and be heard; decision makers are free from bias and decisions are based upon factual and credible evidence.
Program	AQF Qualification, Skill Set, Skill Cluster and standalone Unit of Competency Or any other RTO Training run by NSW Health RTO or it's delivery sites.
RTO	Registered Training Organisation
RTOEO	NSW Health RTO Executive Office
SRP	Student Review Panel
DSD	Delivery Site Director
Urgent Situations	This is where a matter: <ul style="list-style-type: none"> - Poses threat or risk to staff, students or property - Is a risk to the health and safety of RTO stakeholders - Requires referral to the police
VET	Vocational Education and Training

Overview

1. A student misconduct issue may arise or be identified from a number of sources, these include, but not limited to:
 - internally or externally raised allegations; complaints or concerns;
 - managers' or colleagues' observations; notifications including self-disclosure by a staff member or a student;
 - inquiries or investigations; or other workplace processes.
2. It is the responsibility of all members of the RTO to report alleged incidents of student Misconduct.
3. Any time where it is believed that the health and wellbeing of any party will be affected, appropriate professional support is to be provided.
4. Program staff will not, at any time, make any promises or pre-empt any investigations, decisions and outcomes.
5. NSW Health will ensure the health and safety of all staff, students and other stakeholders. Where there is an act that is considered to be threatening or of potential harm by students to the health and welfare of RTO stakeholders, those Students will be immediately removed from the premises and suspended from their studies, including clinical placements until the matter is investigated.
6. All delivery sites will maintain a local Misconduct Register that includes all Misconduct matters, regardless of how they are managed. The Local Misconduct register is to be forwarded to the RTOEO on a quarterly basis.
7. Delivery Site Directors/Managers must notify the RTOEO immediately of all Urgent Situations and Substantial Misconduct findings.

Procedural Fairness

- All students are entitled to procedural fairness in the handling of an allegation of student misconduct including appeal.
- Procedural fairness must be applied at all stages of the process and by all personnel involved.
- Program staff must not hear or determine an allegation of student misconduct if they are personally involved in any aspect of the allegation.
- In the event that an:
 - RTO staff member, including an SRP member, believes that their involvement in a matter would lead to a conflict of interest, they must inform the DSD or SRP chair. The DSD or SRP Chair will determine an appropriate person to replace the member.
 - SRP Chair believes that their involvement in determining a matter would lead to a conflict of interest, the SRP must inform the DSD, who in turn will nominate another Chair.

- Investigator believes that their involvement in the investigation and report outcomes would lead to a breach of procedural fairness or conflict of interest, they must inform the DSD immediately. The DSD will determine an appropriate person to replace the investigator.

Summary of Roles and Responsibilities

Program Coordinator (PC)	To give reasonable directions to address apparent student misconduct and to report alleged student misconduct to the Delivery Site Director.
Delivery Site Director (DSD)	<ul style="list-style-type: none"> Will oversee that procedural fairness is applied in the management of all misconduct incidents/allegations. Forms the Student Review Panel (SRP). Should not serve on an SRP. Cannot be involved or interfere in the decision making of the SRP. Appoints an investigator.
Investigator	<p>Must:</p> <ul style="list-style-type: none"> Not be involved in the matter Have investigation skills <ul style="list-style-type: none"> Undertakes investigations of the matter Interviews affected parties Maintains confidentiality and privacy Closely liaises with the DSD on progress of investigations Produces report and provides to DSD and SRP
Student Review Panel (SRP)	<ul style="list-style-type: none"> Implements a fair process by which all student misconduct matters will be managed. The SRP comprises, at a minimum: <ol style="list-style-type: none"> A Nominated Chair The relevant Program Coordinator (PC); and An Independent Educator (external to the LHD Delivery Site personnel). The DSD should not serve on an SRP. Makes decisions on student progressions, continuation and/or termination of enrolments. An SRP member who is subject to the complaint or has been involved in the incident, must not be involved in the SRP process. DSD must appoint an appropriate delegate. If necessary, the DSD may appoint a staff member from another Delivery Site to a SRP.
Student Support Person	<ul style="list-style-type: none"> Where a meeting is required, the person is entitled to have a support person present at the meeting. This may be a family member or friend. This person may attend the meeting but must not interfere with the proceedings.

Management of Student Misconduct

1. RTO staff who are subject to any complaint will not be involved in the process for managing misconduct issues.
2. Students must be offered the opportunity to bring by a support person to all misconduct discussions and meetings.
3. RTO staff are to act immediately if an urgent matter arises (**Refer to Part B**) and escalate all Misconduct issues to the Delivery Site Director (DSD).
4. All misconduct matters will be actioned and finalised within thirty (30) days or as soon as is practicable. Where this is not possible, the student will be informed in writing of the reasons why and will be regularly informed of updates on the progress of the matter.
5. **Within five (5) working days** of the incident, the DSD will:
 - Decide the way forward depending on the seriousness and urgency of the matter.
 - Ensure that the student is informed of the way forward and the process.
6. The DSD will identify an appropriate person to investigate and or manage the issues. The Investigator will:
 - Gather the initial facts about the misconduct.
 - Record the facts in the form of a detailed report. **See Part A**
 - **Within ten (10) working days** of the DSD's referral, the investigator will provide the report to the DSD ensuring that there is a recommendation to the DSD whether the matter is:
 1. Urgent and requires immediate action because student has been suspended, staff have been removed, or there is significant risk to the organisation or stakeholders. **Refer to Part B**
 2. Managed at the local level. **Refer to Part C**
 3. Referred to the Student Review Panel (SRP). **Refer to Part D.**
 - Substantial matters must be referred to the SRP.
7. The DSD will:
 - Review the investigator report
 - Ensure procedural fairness is followed, if not, inform investigator to address.
 - Provide the report to the PC or SRP as relevant.
 - Inform the student of the decision whether the matter is to be managed:
 - At the Local Level
 - Referred to the SRP
 - Provide student/s with information on the timing and the process.
 - Notify RTOEO of Date or incident, type of Misconduct and who is involved for the RTOEO to record on the Misconduct Register.
8. Written records must be kept up to date at all stages of the process.

Part A - Investigator

- RTO staff who are subject to the complaint will not be involved in the process for managing misconduct issues.
- Where the matter is being managed at the Local Level (**Part B**), the initial investigator will be the Program Coordinator/Delegate.
- Where the matter is deemed to be substantial and requires further investigations, an Independent Investigator (Refer to definition) will be appointed by the Delivery Site Director.
- The investigator must be independent and have the required skills in conducting investigations.
- **Withing ten (10) working days**, the Investigator will:
 1. Liaise with the DSD and decide on how the investigation will be undertaken, including interviews with affected parties and timelines.
 2. Undertake the investigation.
 3. Record, in the form of a detailed report which includes, but is not limited to:
 - Type of misconduct and concerns
 - Details of the incident/allegation
 - Who is involved?
 - Date and time of the incident
 - Timeline of events
 - Communication (verbal and written) that has taken place regarding the incident/allegation, and
 - Findings
 - Other information related to this incident
 - Other relevant evidence, including pattern of behavior and previous misconduct by the student.
 - Recommendation to the DSD whether the matter is:
 - Urgent and requires immediate action because student has been suspended, staff have been removed, or there is significant risk to the organisation or stakeholders. **Refer to Part B**
 - Managed at local level. **Refer to Part C**
 - Referred to the Student Review Panel (SRP). **Refer to Part D.**
- Substantial matters must be referred to the SRP.
- 4. Provide the report to the DSD.

PART B – Management of Urgent Situations

Step 1.

In the first instance, the Management of Urgent Situation will immediately be dealt with as follows:

Staff

- Staff involved in the incident and impacting on stakeholders' safety, health and wellbeing will be removed from the situation and managed in line with local Human Resource policies and procedures.

Students

- Students involved directly in the incident and impacting on stakeholders' safety, health and wellbeing will be immediately removed from the situation and suspended from the program.
- Immediately inform the student that:
 - The matter will be referred to senior management for investigation
 - They will be informed within five (5) working days of the process and the way forward.

Step 2.

Once step 1 is undertaken:

- Staff to report to the Delivery Site Director or Delegate immediately.
- The Delivery Site Director will appoint an appropriate independent investigator (**Refer to Part A**) who may be a staff member not involved in the incident.
- Investigator will conduct the investigation and recommend to the DSD the way forward. This may be:
 - Referral to the Police, if not already done
 - Management at Local Level – **Refer to Part B**
 - Referral to the SRP – **Refer to Part C**
- The Delivery Site Director is to ensure that the student is informed of the process and what will be required of them.

Part C – Management at the Local Level

1. Informal Process

- NSW Health RTO staff will aim to resolve matters at the local level, where appropriate, and ensure a reasonable and proportionate response to matters that impact individuals and the RTO.
- During this process, the PC, or other staff member (as delegated by the DSD), contacts the student to arrange an informal meeting to discuss the issue/s.
- During the meeting, the PC listens to the student, documents the discussions and outcomes of the meeting, including:
 - Issues discussed
 - Extenuating circumstances
 - Provide support and access to support, including coaching and mentoring, additional training and other forms of support
 - Action plan with timeframes, signed by both, student and the Program Coordinator (PC)
- Program Coordinator (PC) monitors the student progress/behaviour to determine whether there are any repeated issues:
 - If there are no further issues, the matter is resolved.
 - If there are no improvements, the PC will issue a **warning letter** and inform the student that if they do not meet the conditions outlined in **the warning letter**, they will be referred to the SRP.
 - If a student is being managed at a Local Level and the student fails to undertake any requirements agreed to resolve the matter, the Program Coordinator (PC) or Delegated Manager may decide to recommend to the DSD to issue a **warning letter**. If the student again fails to meet the requirements, the matter must be referred to the SRP.
 - Only one warning letter may be issued during the Informal Process.
- **Referral to the SRP**
 - Where the student fulfills the conditions outlined in the warning letter, the matter/s is resolved, and no further action will be taken.
 - Where the student does not fulfill the conditions outlined in the warning letter, the matter/s must be referred to the SRP.
 - The PC/Delegate will Inform the Delivery Site Director that the matter will be referred to the SRP.
 - The Delivery Site Director will form the SRP. **Refer to Part C**
 - The PC/Delegate will prepare all relevant documentation including the investigator's report (**Refer to Part A**) and provide a report to DSD for referral to the SRP.

Part D – Student Review Panel (SRP)

- If any member of the SRP is involved in the incident or complaint, they must immediately be removed from the SRP and replaced appropriately.
- The SRP will implement a fair process by which the misconduct matter/s will be managed. The SRP comprises, at a minimum:
 - A Nominated Chair
 - The relevant PC/delegate if appropriate; and
 - An Independent Educator (external to the LHD Delivery Site personnel).
- The SRP Chair will:
 - Write a letter to the student informing them that the matter has been referred to the SRP.
 - Invite them to attend an interview to present their point of view and that they have the right to be accompanied by a support person.
- The SRP will:
 - Review the Investigator's report and any evidence relevant to the matter.
 - Interview the complainant and relevant parties.
- The SRP may request further information and investigations if required.
- Should the complainant refuse to attend the interview or fail to attend without **adequate** notice to reschedule, the SRP can make a determination in such cases.
- The SRP will make a decision whether the matter is **Minor** or **Substantial** and will decide on any further action that must be undertaken.
- The following are warnings that the SRP will recommend to the DSD:
 - **A Warning Letter**
This may only be used where:
 - The student has not previously received a warning letter and the matter is deemed as **Minor**. Or
 - The matter is deemed as Substantial but there are extenuating circumstances and it is expected that the student will be able to rectify their errors and not repeat the misconduct.
 - **A Final Warning Letter**
This may only be used where:
 - The matter has been deemed by the SRP is **Substantial** in nature. Or
 - The student has already received One or more warning letters and there is evidence that the student is continually failing to adhere to the conditions set out in previous letters.
 - All warnings must outline the conditions for continuing enrolment. If these conditions are not met, the student should be made aware that the matter may result in determination of substantial misconduct. Failure to meet the conditions of a Final Warning Letter will result in **Termination of Enrolment. Refer to Part D**

A Termination Letter (**Refer to Part D**) may be recommended where the misconduct is considered Substantial and a potential risk to RTO or NSW Health stakeholders or property.

Part D – Warning Letters

Warning Letter (Refer to template)

- The letter must clearly outline the following information:
 - Details of any previous Warning Letter/s
 - The standard of conduct required within a given timeframe, the possible consequences of failing to reach the standard and an indication of what help is available to enable the student to meet those expectations
 - Conditions, timelines and the performance monitoring process. The contract must be signed by the student and the PC.
 - Requirement to undertake additional training in academic integrity, Code of Conduct or any other training relevant to the findings.
 - Access to coaching, counselling and support.
 - A review will be undertaken immediately if they do not adhere to the conditions set out in the Warning letter or commits further breaches of misconduct.
 - This review process may result in a further Warning letter, or referral to the SRP for a decision to decide upon issuing a Final Warning, with updated conditions being issued
- The student is informed that their performance will be followed up. If a review determines that the student has:
 - Met the conditions outlined, then the matter is resolved and no further action will be taken,
 - Not met the conditions outlined, the matter will be referred to the SRP for further review and determination.

Final Warning

- The SRP will issue a **Final Warning Letter** with strict conditions that student must adhere to.
- The SRP will follow up student's performance with the Program Coordinator (PC) and will determine the way forward.
- If the Student fails to meet the conditions outlined in the final warning letter, the matter will result in issuing a termination letter. **Refer to Part E**

Part E - Termination of enrolment

If it is determined that the student has committed repeated misconduct with no performance improvement, the SRP will provide the student with a Termination letter, outlining the:

- Reasons for the decision
- The Internal Appeal Process
- Units of Competency (UOCs) achieved during their enrolment and that they will be issued with a Statement of Attainment for these UOCs.

PART F – Completion

Notify RTOEO of outcome and date of completion to record on the Misconduct Register.

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