

Misconduct Procedure – Non-Academic

Policy Number	3/2020
Approving Authority	NIDA Board of Directors
Date Implemented	
Current Version	24 October 2019
Date of Review	January 2021
Contact Officer	Head of Student Engagement Learning and Quality Assurance
Related Policies, Procedures and Documents	NIDA Student Charter, including Code of Conduct Grievance Policy and Procedure: Non Academic Matters Anti-discrimination, Bullying and Harassment Policy Sexual Misconduct Policy Misconduct Policy – Non-Academic Alcohol, Drugs, and Smoking Policy Assessment Policy Attendance Policy Student Handbook Fees Policy

1. DEFINITIONS

Term	Definition
Behavioural Agreement Contract	A binding document between NIDA and the student which outlines: <ul style="list-style-type: none"> - What constitutes inappropriate behavior - What corrective action will be necessary (including penalties or restrictions imposed) - The length of the agreement (from several days to the remainder of the student's NIDA enrolment) - The probable outcome if the agreement is not upheld by the student.
Disciplinary action	Formal action taken by NIDA that imposes a penalty on a student. This formal action is recorded on a student's permanent record.

Expulsion	Permanent cancellation of a student's NIDA enrollment. Students who are expelled from NIDA are not allowed access to NIDA property or facilities and are not eligible to reapply to study at NIDA. Expelled students are not eligible to receive refunds of tuition fees and the expulsion is recorded on the student's NIDA record.
In Absentia	Formal Latin phrase used to mean "while absent", in the graduation context it means the student will graduate and be given a certificate but they will not attend any formal graduation ceremony.
Laws of the Land	Any Australian State, Territory or Commonwealth laws and the laws of any land in which the student may be undertaking an industry placement.
NIDA Code of Conduct	Framework outlining the rights and responsibilities of all members of the NIDA community in terms of behavior whilst at NIDA, working for NIDA or involved in NIDA related activities offsite.
Misconduct	Any behavior/s that do not comply with the NIDA Code of Conduct or any of the other NIDA Student Policies and Procedures or laws of the land.
Procedural Fairness	<p>The right to a fair process of review and the process for making a decision, not the decision itself. It requires:</p> <ul style="list-style-type: none"> ▪ ensuring there is a timely and thorough investigation of evidence and that all relevant submissions and any mitigating factors are taken into account; ▪ the opportunity for all parties to be heard, ▪ those who have had a complaint made against them to be aware of the allegations and their right of response to the allegations; ▪ ensuring all parties are informed of the procedures under which the matter is being handled and are given access to the relevant policy and procedure documents; ▪ the right to have any material considered by an unbiased, impartial decision-maker ▪ advising all parties that disciplinary penalties may apply for unfounded or malicious allegations and for breaches of the Code of Conduct or policies
Suspension	A period of exclusion where a student is not able to attend NIDA classes and is not allowed to access NIDA property or facilities. No refunds will be issued and the suspension forms part of the student's permanent record.
Safe work environment	One that is free from violence, bullying, discrimination or harassment and where organizational efforts are focused on reasonably practicable reduction of health and safety risks.
Show Cause	The student is given the opportunity to provide an explanation and provide any supporting evidence they feel is required to explain why they should be given an opportunity to continue their studies or in the case of exclusion to explain how they are ready to return to NIDA studies.

2. PURPOSE and PRINCIPLES

The purpose of this document is to set out the procedures by which alleged breaches of the NIDA Student Code of Conduct or other policies will be managed.

NIDA considers that in the interests of the NIDA community allegations of misconduct or breach of policy should be addressed in a manner that is fair, consistent, timely, transparent and in accordance with the principles of procedural fairness and privacy.

3. SCOPE and RESPONSIBILITIES

This procedure applies to all students enrolled in accredited courses at NIDA, for all subjects.

This procedure does not replace or modify NIDA's obligations to report under state or federal law.

This procedure has rights and responsibilities as follows:

The Head of Student Engagement Learning and Quality Assurance is responsible for:

- Ensuring the accessibility of this procedure by staff and students
- Implementation of this procedure
- Monitoring and ensuring currency of the procedure and ensuring amendments are updated as required
- Establishing a communication process that is transparent, fair and confidential with respect to misconduct matters

Course Leaders and Heads of Department are responsible for:

- Being aware of and following the procedure
- Escalating potential incidents of misconduct appropriately

Academic teaching staff are responsible for:

- Notifying the relevant Course Leader of any behavior that might be considered misconduct or of any behavior that poses a potential threat to the NIDA community, its members and or reputation
- Maintaining the privacy and confidentiality of the student(s)

Administrative staff are responsible for:

- Recording upon request notifications of Misconduct investigations and their outcomes in the relevant student file
- Maintaining the privacy and confidentiality of the student/s and their records

Students, including alumni, exchange students or ex-students (who were enrolled at the time of the alleged misconduct) are responsible for:

- Being aware of and following the procedure
- Communicating to their Course Leader or NIDA staff if they become aware of or witness behavior they believe constitutes misconduct and or a breach of any NIDA Policies and Procedures.

4. PROCEDURE

4.1 Reporting alleged misconduct

4.1.1 Allegation of misconduct can initially be verbal but for a formal investigation the verbal report must be followed by a written report, with evidence, to Head of Student Engagement Learning and Quality Assurance or the Director, Vocational Education.

Email to:

Kylie.Black@nida.edu.au – for Higher Education, or

Mark.Gaal@nida.edu.au – for Vocational Education

Within ten (10) working days of the allegation being received the student against whom an allegation has been made will be advised in writing via their NIDA student email account of the receipt and nature of the allegation.

4.2 Investigation

- 4.2.1 The investigation may involve interviews with the complainant, the student against whom the allegation is made and or any witnesses or individuals the Director, or their nominated representative wish to interview with in relation to the allegation
- 4.2.2 A written report is made summarising the evaluation of the evidence presented, including any previous complaints or evidence of repeated patterns of behaviour.
- 4.2.3 Depending on the nature of the alleged misconduct NIDA management may determine that the student presents a threat to one or more members of the NIDA community, including themselves and take the step to suspend the student until such time as the investigation is completed.

4.3 Determination

The determination will be confirmed in writing giving reasons and the detail of any penalty typically within ten (10) working days of the conclusion of the investigation.

There are a range of determinations that can be made based on the outcome of the investigation. If the allegation is proven and it is a repeated event this will be taken into consideration in the determination. The imposition of any penalty will not take effect until after the conclusion of the appeals process, unless there are exceptional circumstances involving the safety of others or the proper functioning of NIDA that requires that the student not be permitted to attend NIDA.

If the student is an overseas student studying in Australia then NIDA will inform the student that suspension or exclusion from NIDA may affect their student visa. Students suspended or excluded from NIDA in accordance with this policy shall not be entitled to any refund of course fees.

As a result of the investigation it may be determined to:

- 4.3.1 Dismiss the allegations, if they have not been proven
- 4.3.2 Take no further action (impose no penalty) as no penalty is warranted
- 4.3.3 Require a formal apology to be made to the relevant party
- 4.3.4 Require restitution of damages
- 4.3.5 Place a student on a Behavioural Agreement Contract or a Performance Management Plan which might require a student:
 - to enter into mediation with relevant parties
 - to attend counselling or seek professional assistance and support.

- to accept restricted access to NIDA facilities or activities, including assessments and classes for a stated period of time
- 4.3.6 In the case of academic misconduct, issue a formal reprimand or warning, to reduce the student's marks or fail the student in the subject or course or to require remedial educative action. Such a warning forms part of the student's permanent record.
- 4.3.7 Apply disciplinary action – including but not limited to
- a formal Code of Conduct Warning. Such a warning forms part of the student's permanent record, and or
 - Withdrawal of student access to some or all NIDA activities (including assessment activities such as productions), facilities or services for a specific period of time
 - Provision of access to facilities and resources under certain conditions
- 4.3.8 Suspension - Suspending the student from NIDA and NIDA courses for a period of any duration up to 24 months, including the option of conditional return from exclusion- show cause
- 4.3.9 Expulsion - Cancelling the student's enrolment at NIDA. Expulsion from NIDA is permanent with no ability to reapply or refund of monies paid.

4.4 Appeals

- 4.4.1 Students have up to ten working days in which they may appeal the decision to issue them with a penalty, including suspension or exclusion.
- 4.4.2 An appeal against a finding of non-academic misconduct or against any specific penalty will be treated in accordance with NIDA's Grievance Policy and Procedures: Non Academic Matters.
- 4.4.3 An appeal against a penalty for academic misconduct will be treated in accordance with NIDA's Grievance Policy and Procedures: Academic Matters.

4.5 Reporting

- 4.5.1 In the case where the determination is to exclude or suspend an overseas student from studies NIDA will also notify the Secretary of the relevant Australian Government Department of its decision as is required under Section 19 of the ESOS Act.
- 4.5.2 In all cases where the determination is to exclude or suspend a student or impose restrictions on a student enrolment the CEO/Director will advise the Board of Directors.

5. LEGAL and POLICY FRAMEWORK

Legislation and Regulatory Frameworks	Age Discrimination Act 2004: Disability Discrimination Act 1992 Racial Discrimination Act 1975 Sex Discrimination Act 1984 New South Wales Anti-Discrimination Act 1977 (NSW) Smoke Free Environment Act 2000 (NSW) Smoke Free Environment Regulation 2007 (NSW) Work Health and Safety Act 2000 (NSW) Work Health and Safety Regulation 2011 Drugs, Poisons and Controlled Substances Act (DPSCA) Commonwealth regulations related to NIDA's funding and sub-lease agreements Other relevant legislation and industry standards
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6. APPENDIX: CHANGE HISTORY

Date	Change Description	Reason for Change	Author	Version
October 2019	Policy and Procedure separated into independent documents			2.5
February 2017	As part of the review the procedure was altered (delay caused by review of NIDA Code of Conduct, which shifted from a student code to a NIDA community code. Changes include: Reference to new NIDA Code of Conduct, inclusion of an expulsion option, the shift in first stage of reporting to the Executive Director of Learning and Teaching and Director, Vocational Education	Review Date – January 2016 Policy and Procedure Review	Education Manager	2.0 Misconduct Policy and Procedure
October 2013				Student Misconduct Procedures