

Managing Learner Misconduct Procedure

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Purpose

This procedure establishes responsibilities for maintaining appropriate learner conduct and for implementing disciplinary actions as appropriate.

This procedure does not cover issues relating to academic misconduct.

This procedure should be read in conjunction with:

- **TLN012POL - Managing Learner Misconduct policy**; and
- the external legislation and internal policies and procedures listed below. In the event of any conflict, external regulations take precedence over this policy and associated procedure.

Scope

The procedure applies to all enrolled learners of TAFE Gippsland.

This procedure extends to conduct on campus and in related activities offsite, for example, online, on approved field trips/excursions or an approved work placement in industry.

Where staff are delivering or assessing at other premises, such as a school, employer's workplace or at an official approved excursion, the procedure must be applied only after negotiation with the other responsible party(s).

Procedure

The learner enrolment and orientation processes provide the appropriate forums to outline the Learner Code of Conduct (**TLN012COC - Learner Code of Conduct**).

The duty of care provided by staff will ensure that all learners are cared for on campus as well as in off campus managed TAFE Gippsland activities. The procedure ensures that potential risks are identified and mitigated. In an emergency situation, staff should take reasonable action to ensure everyone's safety.

This procedure adopts a tiered system of informal review, formal review, and appeal (except in emergencies or for serious incidents).

In instances where alleged misconduct threatens staff or learner health, safety, wellbeing, or the integrity of the institute's network, the student may be suspended for a period of not more than 10 working days during which time an investigation will be undertaken by the Head of Department into the breach.

Serious Incidents

Step	Action	Responsibility
1	Any dangerous and/or illegal behaviour should be reported to Police by dialling triple zero (000). The first attending police officers will determine if support from emergency services is required. Immediately advise the Program Manager and Head of Department.	Classroom Educator

Step	Action	Responsibility
2	<p>Liaise with the Manager Wellbeing Health and Safety where an incident creates a risk to health and safety within the meaning of the <i>Occupational Health and Safety Act 2004</i>.</p> <p>Report all workplace incidents, hazards, near misses and injuries, in accordance with the WHS003POL – Incident Reporting and Investigation Policy.</p> <p>As soon as possible advise the Director Education Delivery and Director Academic Governance of the incident.</p> <p>Where the incident involves any person under the age of 18 years, promptly advise the Child Safe Officer.</p> <p>Where the incident involves any VET Delivered to Secondary Student, promptly advise VDSS Liaison Officers in accordance with TLN008PRO – VET Delivered to Secondary Students Procedure.</p>	Head of Department
3	<p>As soon as practicable and not longer than the end of the day the incident is reported, collect written statements from all persons involved in the incident.</p> <p>Make a preliminary assessment of the evidence of misconduct.</p> <p>Where the evidence of misconduct is conclusive, communicate with all parties using approved communications channels.</p> <p>Convene a meeting within 2 business days with the learner, parent/guardian, employer, educator and other internal and external parties for learner to give cause against suspension/expulsion.</p>	Head of Department or delegate

Step	Action	Responsibility
4	<p>Where the evidence of misconduct is not conclusive (that is where there is any question about questions of fact or mitigating circumstance), undertake a disciplinary investigation (<i>see Guidelines for conducting a disciplinary investigation and meeting</i>)</p> <ul style="list-style-type: none"> • gather evidence: written statements, photographs, incident reports. • where the incident involves any person under the age of 18 years liaise with the Child Safe Officer to determine responsibilities for undertaking any investigation. • where the Child Safe Officer will not conduct the investigation, convene a disciplinary meeting within 10 working days of advice of incident/s and action to date, for learner to give cause against suspension/expulsion. • invite attendees to disciplinary meeting; <ul style="list-style-type: none"> ○ If learner is under 18 years of age a parent/guardian will be invited; ○ If the learner is an apprentice under 18 years of age the employer will be invited; ○ where an incident creates a risk to health and safety within the meaning of the <i>Occupational Health and Safety Act 2004</i> invite the Manager Wellbeing Health and Safety; ○ where the incident involves any VET Delivered to Secondary Student, liaise with the home school through the VDSS Liaison Officers prior to the meeting. (Refer: TLN008PRO – VET Delivered to Secondary Students Procedure). • advise the learner they may invite a friend/advocate who is not a TAFE Gippsland staff member or attending in any legal capacity • inform all parties in writing of the allegations to be presented to the disciplinary meeting. • ensure both sides of the argument are given due consideration • arrive at a decision if the allegations are substantiated or not proven. • complete formal report. <p>Where allegations are proven, decide to:</p> <ul style="list-style-type: none"> • formally reprimand and caution the learner; • direct the learner to complete corrective action; • direct learner to refrain from contact with specified persons; • prohibit or deny the learner access to or use of TAFE premises, facilities and services or TAFE activities for a period of time; • recommend to the Director Academic Governance, suspension of the learner from classes for a period of up to two (2) weeks (i.e. ten (10) working days) or terminate enrolment and expel the learner. 	Head of Department (Chair)
5	Record evidence of misconduct and outcomes of the meeting in the learner file and SMS	Program Manager

Step	Action	Responsibility
6	Advise learner of right of appeal and appeal process.	Head of Department
7	Advise learner of the decision to issue Notice of Suspension or Notice of Immediate Expulsion.	Head of Department
8	Issue Notice of Suspension or Notice of Immediate Expulsion and Covering Letter.	Director Academic Governance
9	Communicate outcome to Student Services and via SMS.	Program Manager
10	Lodge an appeal against the decision in writing within 10 days of notification of suspension or expulsion.	Learner
11	Appeals process activated and investigated using CMT006POL - Complaints Reviews and Appeals Policy and procedure.	Director Academic Governance
12	If, after investigation, the alleged misconduct is unproven then the following actions must be taken: <ul style="list-style-type: none"> notice of Suspension withdrawn and SMS amended; a formal, written apology must be provided to the learner (<i>a copy of this must be registered on learner file</i>); steps must be taken to compensate the learner if they have suffered any disadvantage throughout the process (<i>e.g., additional training or tuition to make up for classes missed through exclusion</i>); instigate reviews or changes to Institute procedures or systems to reduce the likelihood of the situation recurring. 	Director Academic Governance
13	If, after investigation, the alleged misconduct is proven then one of the following actions must be taken: <ul style="list-style-type: none"> issue Notice of Suspension and Prepare Behaviour Contract for return to learning (optional); notice of Immediate Expulsion and Covering Letter issued and stakeholders advised; 	Director Academic Governance

Non-Serious Incidents - First Instance

Step	Action	Responsibility
1	Where behavioural misconduct occurs a staff member will discuss the misconduct with the learner explaining the behaviour in question is unacceptable and refer to the Learner Code of Conduct and Learner Discipline Guidelines. Examples of misconduct include: <ul style="list-style-type: none"> the learner's behaviour is disruptive to other learners in the class; the learner's behaviour is disruptive to the learning environment; the learner is found to be under the influence of alcohol or prohibited substances; the learner is behaving in a manner that is of a health and/or safety issue. 	Staff member/Classroom educator

Step	Action	Responsibility
2	Instruct the learner to stop the misconduct.	Classroom educator
3	Where misconduct occurs during class or scheduled learning activity, an educator may exclude the learner from the precincts of the room and the immediate area of the room, for the remainder of that class/online session, provided that a Verbal Warning is given and a diary note made recording details leading to the warning.	Classroom educator
4	With any exclusion: <ul style="list-style-type: none"> if the learner is under the age of 18 years, or if they have a declared disability, the educator will telephone campus reception for an adult staff member to come to the classroom to escort the learner from the classroom to a place for supervision; the learner must be escorted from the classroom by an adult member of staff and placed under the supervision of another staff member until the end of the class from which they have been excluded; advise the relevant Program Manager of the action taken as quickly as is practicable and no later than the end of the day on which the exclusion occurs. 	Classroom educator
5	All exclusions to be recorded in the attendance record.	Classroom educator

Non-Serious Incidents - Repeated Instances

Step	Action	Responsibility
1	Where behavioural misconduct continues, discuss the misconduct confidentially with the learner explaining the type of misconduct and disruptive behaviour requiring further action. Explain why the behaviour in question is unacceptable and refer to the Learner Code of Conduct and Learner Discipline Guidelines.	Classroom educator
2	Instruct the learner to stop the misconduct.	Classroom educator
3	Where misconduct persists an educator may exclude the learner from the precincts of the room and the immediate area of the room, for the remainder of that class/online session, and for up to 2 continuous working days and issue a Verbal Warning or a Written Warning (<i>Complete form Written Warning</i>).	Classroom educator
4	Where the learner fails to comply, report inappropriate behaviour to the relevant Program Manager for assessment of the seriousness of the allegations and for further investigation. Report inappropriate behaviour involves VDSS student/s, report the inappropriate behaviour to the VDSS Liaison Officers for notification to the home school.	Classroom educator

Step	Action	Responsibility
5	With any exclusion: <ul style="list-style-type: none"> if the learner is under the age of 18 years, or if they have a declared disability, the educator will telephone campus reception for an adult staff member to come to the classroom to escort the learner from the classroom to a place for supervision; the learner must be escorted from the classroom by an adult member of staff and placed under the supervision of another staff member until the end of the class from which they have been excluded; advise the relevant Program Manager of the action taken as quickly as is practicable and no later than the end of the day on which the exclusion occurs; for VDSS learners, advise the VDSS Liaison Officers as quickly as practicable and no later than the end of the day on which the exclusion occurs to enable them to inform the home school. 	Classroom educator
6	All exclusions to be recorded in the attendance record.	Classroom educator
7	Meeting with learner to issue a Written Warning and complete a Behaviour Contract.	Classroom educator
8	Submit copy of Written Warning and Behaviour Contract to relevant Program Manager.	Classroom educator
9	Monitor achievement of the Behaviour Contract and assess the need for further investigation.	Program Manager
10	Director Academic Governance and Head of Department advised of incidents and action to date.	Program Manager

Related Legislation/Regulation

- [Disability Discrimination Act 1992](#) (Commonwealth)
- [Disability Standards for Education 2005](#) (Commonwealth)
- [Sex Discrimination Act 1984](#) (Commonwealth)
- [National Vocational Education and Training Regulator Act 2011](#) (Commonwealth)
- [Race Discrimination Act 1975](#) (Commonwealth)
- [Privacy Act 1988](#) (Commonwealth)
- [Children, Youth and Families Act 2005](#) (Victoria)
- [Child Wellbeing and Safety Act 2005](#) (Victoria)
- [Education and Training Reform Act 2006](#) (Victoria)
- [Equal Opportunity Act 2010](#) (Victoria)
- [Gender Equality Act 2020](#) (Victoria)
- [Privacy and Data Protection Act 2014](#) (Victoria)

- [Occupational Health and Safety Act 2004 \(Victoria\)](#)

Related Policy and Procedures

- TLN012POL - Managing Learner Misconduct Policy
- TLN012COC - Learner Code of Conduct Policy
- CMT006POL - Complaints Reviews and Appeals Policy
- PAC003POL - Child Safety Policy
- ICT001POL - Use and Provision of ICT Services and Facilities (TAFE Gippsland) Policy
- TLN013POL - Academic Integrity Policy
- WHS003POL – Incident Reporting and Investigation Policy
- TLN008POL – VET Delivered to Secondary Students Policy
- TLN008PRO – VET Delivered to Secondary Students Procedure

Related Documents

- TLN012GDE1 - Learner Discipline Guidelines
- TLN012GDE2 - Guidelines for conducting a disciplinary investigation and meeting
- TLN012GDE3 - Guidelines for Learner Use of Mobile Phones and Smart Devices
- TLN012FOR1 - Notice of Immediate Expulsion form
- TLN012FOR2 - Written Notice of Suspension form
- TLN012FOR3 - Notice of Written Warning form
- TLN012TMP1 - Report of Investigation of Misconduct template
- TLN012TMP2 - Learner Behaviour Contract template

Definitions

Term	Definition
Academic Integrity	Plagiarism and any other type of cheating that occurs in relation to academic activities.
Advocate	A support person of the person's choice who is not a TAFE Gippsland staff member and who is not attending in a legal capacity
Appeal	Formal process which allows an individual to challenge the decision affecting them.
Learner Behaviour contract	A contract between the Institute and the learner that clearly sets out the conditions under which the learner may continue to participate in the Institute, in particular the Institute expectations for behaviour.

Term	Definition
Bullying	<p>Bullying is repeated, unreasonable behaviour directed towards a learner, or group of learners, that creates a risk to health and safety.</p> <p>Within this definition:</p> <ul style="list-style-type: none"> • “Behaviour” includes actions of individuals or a group, and may involve victimising, humiliating, undermining or threatening others • ‘Unreasonable behaviour’ means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten others • ‘Risk to health and safety’ includes risk to the mental or physical health of the learner(s). This definition is intended to cover a wide range of behaviour that can be direct or indirect and can have an adverse impact on the health and safety of staff and learners <p>‘Repeated’ refers to the nature of the behaviour, not the specific form of the behaviour. Therefore, repeated unreasonable behaviour may be a pattern of diverse incidents. It may include, for example, being verbally abused on one occasion, personal property being purposely damaged on another occasion, and in another instance being unreasonably threatened. Behaviour will be considered ‘repeated’ if there is an established pattern.</p>
Discrimination	<p>In short, discrimination is defined as denying someone an opportunity or treating someone less favourably on the basis of an attribute that is irrelevant to the circumstances.</p> <p>A more detailed definition would be that it refers to unfair or less favourable treatment based on the following actual or assumed personal characteristics as defined under Commonwealth and State laws: sex, gender identity, marital status, pregnancy, breastfeeding, status as a parent or carer, sexual orientation, lawful sexual activity, race, disability, age, industrial activity, physical features, religious beliefs or activities, political beliefs or activities, criminal record, medical record or personal association with a person who has, or is assumed to have, one of these personal characteristics</p>
Harassment	<p>In short, harassment is persistent, unwelcome and unreciprocated behaviour which may be physical, verbal or visual and which may cause the victim unnecessary feelings of distress, guilt, confusion and/or fear.</p> <p>Harassment refers to a wide range of deliberate and unintentional behaviours which may humiliate, intimidate or offend and which are unwelcome and uninvited. It includes behaviour which may be written, verbal, non- verbal or physical (including transmission of inappropriate electronic communications and display of inappropriate material from the internet) and is of a sexual nature or is based on attributes listed under ‘Discrimination’ above.</p>
Learner	Person currently enrolled in any TAFE Gippsland course of study
Learner Code of Conduct	Learner Code of Conduct for the behaviour of learners while enrolled in TAFE Gippsland courses that forms part of this policy and procedure

Term	Definition
Misconduct	Any act or omission by a learner that breaches the Learner Code of Conduct or: <ul style="list-style-type: none"> is prejudicial to the orderly conduct of the business of TAFE Gippsland directly and adversely affects the Institute or any learner, staff member or visitor of the Institute, or suspected criminal activity
Non-serious Incidents	Incidents not involving illegal activities (see Serious Incidents for examples). Incidents where the behaviour breaches the Learner Code of Conduct and causes disruption to other learners or TAFE Gippsland staff, or breaches the rights of others (eg plagiarism).
Serious Incidents	An event which causes disruption to TAFE Gippsland; or creates significant danger or risk that could traumatically affect individuals or attracts negative media attention or a negative public profile for TAFE Gippsland, including but not limited to illegal behaviour including assault, theft, damage to property, bullying, harassment, discrimination, use of illegal substances or misuse of TAFE Gippsland digital network and acts of forgery
Staff	Means TAFE Gippsland employees, Board members, volunteers and persons performing work at the direction, on behalf of or in connections with TAFE Gippsland (including contractors, subcontractors, secondees, agents and temporary staff).
Suspension	Means the suspension of the learner's studies and a physical ban on the learner attendance at the Institute.

Version Control

Item	Summary of Update	Version	Review Date
1	Original Policy Document	1.0	13/11/2014
2	Various updates addressing learner issues not in original issues up to 24/11/2016	1.1	24/11/2016
3	Smoking and Illegal and Addictive Substances clause in Learner Orientation Guide added to Procedure Page 4	2.0	23/11/2017
4	Update to policy and procedure Positions Name change from : Managing Inappropriate Behaviour	3.0	03/09/2018
5	Rebranded from Federation Training to TAFE Gippsland	4.0	14/06/2019

Item	Summary of Update	Version	Review Date
6	<ul style="list-style-type: none"> Substantial overhaul of the policy, procedures and supporting documentation. Renamed to better reflect purpose of managing learner misconduct TL039 <i>Guidelines for student use of mobile phones in class</i> incorporated into this policy and procedure TL014 <i>Student Code of Behaviour Policy</i> incorporated into this policy and procedure as the Learner Code of Conduct Redevelopment recognises responsibilities to persons under the age of 18 years 	5.0	09/07/2021
7	Evidence of misconduct clauses and non-serious and serious incidents definitions updated.	5.1	10/08/2021
8	Review and adoption of new template and naming conventions.	5.2	13/01/2023
9	Minor correction made to referenced document number	5.3	30/05/2023
10	Process regarding the handling and reporting of serious incidents strengthened; Communication requirements for incidents involving VDSS students clearly specified.	6.0	17/10/2023

Appendices

Nil