



## Staff Disciplinary Policy

### 1. Purpose

The purpose of this policy is to provide a process and guidance to Western Sydney University International College (WSUIC) managers for dealing with cases of persistent and unresolved unsatisfactory performance, misconduct or serious misconduct (including situations where summary dismissal is appropriate).

### 2. Scope

- 2.1 This policy applies to all employees engaged by WSUIC and covers conduct both in the workplace and at work-related functions such as work lunches, dinners, conferences, year-end functions and client/customer functions.
- 2.2 This policy is not intended to be used where a staff member has lodged a grievance relating to their employment, the workplace or against another employee/s. Such matters should be dealt with through the WSUIC Staff Grievance Management Policy. In such instances where an outcome from a grievance process results in a recommendation for disciplinary action, such action will be dealt with under this policy.
- 2.3 Staff engaged by WSU or WSU Enterprises/The College, are subject to Western Sydney University's related disciplinary policies and procedures. This differentiation allows for variance to some procedural actions between the two higher education providers but does not impact on the integrity or spirit of the policy.

### 3. Policy Statement

- 3.1 WSUIC is committed to a transparent and speedy resolution of all disciplinary matters, following the principles of natural justice. Accordingly, and where possible, disciplinary matters will be managed having regard to the privacy of all those who are involved, in a confidential manner,
- 3.2 Consistent with appropriate legislative responsibilities, the principles underlying WSUIC's disciplinary procedures are those of equity, fairness and respect for the individual. All disciplinary matters will be dealt with seriously as having potential impact on the delivery of services, optimum student experience and positive staff collaboration and interaction. WSUIC will initiate disciplinary action in cases of unresolved and persistent poor performance, misconduct and serious misconduct.



#### **4. Involvement in Incident or Pattern of Work Conduct**

- 4.1 Where a group of employees are involved in an incident or a pattern of work conduct, the manager should examine each employee's behaviour individually. The manager must not make a blanket decision based on the conduct of the worst offender.
- 4.2 On all occasions the employee will be given the opportunity to have a support person present at a formal performance discussion. The support person must not respond on the employee's behalf or otherwise intervene in the meeting or interview, except where this contributes to transparency and fairness.
- 4.3 While WSUIC will seek to resolve any issues of misconduct or work performance in accordance with its policies and procedures, employees have the right to seek the intervention of external bodies such as Fair Work Australia, and to consult or seek representation from their union, at any stage in this process.
- 4.4 If the conduct involves a potential breach of Australian criminal law, WSUIC may notify the police and/or other relevant government authority.

#### **5. Unresolved Unsatisfactory Performance**

- 5.1 Where the performance of an employee is unsatisfactory, managers would be expected to adhere to the Navitas Disciplinary Policy for operations based in Australia and the Navitas Managing Unsatisfactory Performance Policy and Procedure.
- 5.2 Where regular performance management processes have not been successful in improving an employee's persistent poor work performance, then disciplinary action, up to and including termination of employment, may be taken.

#### **6. Misconduct**

Misconduct can be broadly described as wilful behaviour by an employee that constitutes but is not limited to:

- 6.1 A breach of WSUIC policy and/or procedure, including the standards outlined in WSUICs Staff Code of Conduct.
- 6.2 A breach of an obligation prescribed under an employee's contract of employment or relevant industrial instrument (such as an Award or Enterprise Agreement).
- 6.3 Criminal activity that impacts on the employee's role and responsibilities in the organisation (such as theft or fraud).
- 6.4 Dishonest practices that reveal the employee is unfit for a position of trust and confidence.
- 6.5 Behaviour that a reasonable person would not condone within the workplace.
- 6.6 Disobedience/wilfully refusing to observe a lawful and reasonable instruction of a manager and/or directive of WSUIC.



- 6.7 Language that a reasonable person would deem to be obscene and/or abusive.
- 6.8 Intimidating behaviour, bullying and/or vilifying behaviour.
- 6.9 Failure to observe Occupational Health and Safety legislation and/or policies and procedures.
- 6.10 Negligence/incompetence or other dereliction of duties.
- 6.11 Being under the influence of illicit drugs or alcohol during work hours.
- 6.12 Breach of duty regarding non-disclosure of confidential information.
- 6.13 Acting outside authority/responsibility assigned to the position.
- 6.14 Deliberately damaging WSUIC property or that of other employees.
- 6.15 Unprofessional conduct such as those that indicate breach of the WSUIC Staff Code of Conduct.
- 6.16 Acts of discrimination, harassment, sexual harassment or racial/ethnic abusive behaviour.
- 6.17 Misbehaviour of a kind that constitutes a serious impediment to the carrying out of an employee's duties or to other employees carrying out their duties.

## **7. Serious Misconduct**

- 7.1 Any of the matters listed under the definitions of "Misconduct" above may be viewed as serious misconduct, dependent on the circumstances. Each case must be evaluated as to the degree of seriousness, in accordance with the substantive and procedural fairness requirements.

- 7.2 Serious misconduct, which can result in termination without notice is defined in the Fair Work Act 2009 as:

- 7.2.1 Wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment

AND

- 7.2.2 Conduct that causes serious and imminent risk to:

- 7.2.2.1 The health or safety of a person (including fighting on WSUIC premises or threatening or engaging in any other form of physical violence) or

- 7.2.2.2 The reputation, viability or profitability of WSUIC or serious cases where:

- 7.2.2.2.1 The employee, in the course of the employee's employment, engages in:
        - (i) theft; or
        - (ii) fraud; or
        - (iii) assault; or
        - (iv) The employee is intoxicated at work; or

- 7.2.2.2.2 The employee refuses to carry out a lawful and reasonable instruction that is consistent with the employee's contract of employment.



## **8. Disciplinary Outcomes**

Where it has been established that a staff member has engaged in misconduct or serious misconduct, the following forms of action may be deemed appropriate:

- 8.1 Counsel and/or censure the employee for unsatisfactory behaviour and/or arrange for appropriate professional development.
- 8.2 Written warning.
- 8.3 Final written warning.
- 8.4 Transfer to another position/location.
- 8.5 Demotion/loss of salary.
- 8.6 Termination of employment, in cases of “serious misconduct” as set out in Clause 7.2 of this policy.

## **9. Responsibilities**

- 9.1 The employee’s manager is responsible for:
  - 9.1.1 Ensuring that the employee has been given every reasonable opportunity to improve performance or conduct before beginning disciplinary action, where relevant.
  - 9.1.2 Clearly articulating the areas of concern and stating the improvements required.
  - 9.1.3 Ensuring that all cases of dismissal follow procedural fairness, including a full and detailed investigation, providing the employee with every opportunity to present their explanation and ensuring that decisions made are based on all relevant facts.
  - 9.1.4 Ensuring that all WSUIC property is accounted for at the time of dismissal.
  - 9.1.5 Ensuring that Navitas Human Resources Shared Services are provided with all information relating to the termination of the employee so that the correct entitlements can be paid as soon as possible after the termination has taken place.
  - 9.1.6 Ensuring all documentation recorded throughout the disciplinary process is placed on the employee’s personnel file (via Navitas Human Resources Shared Services where relevant).
- 9.2 Navitas Human Resources Shared Services will provide support, guidance and professional expertise to the employee’s manager, particularly on matters pertaining to a warning, final warning, potential dismissal and/or serious misconduct.



## **10. Procedure**

### **10.1 Investigation**

10.1.1 Depending on the circumstances, it may be necessary for the College Director and Principal (with assistance from HR Shared Services where required) to conduct an investigation into incidents and/or allegations. This may involve collecting relevant data, interviewing the relevant employee, relevant witnesses such as the employee's co-workers or supervisors, or potentially students with whom the employee has had contact. In case of any matter related to the College Director and Principal, the matter will be investigated and dealt with by Navitas HR Shared Services in consultation with the Chair of WSUIC Board of Directors.

10.1.2 The College Director and Principal (with assistance from HR Shared Services where required) will endeavour to investigate all allegations of unsatisfactory performance and misconduct including unprofessional misconduct and serious misconduct by an employee fairly and promptly.

10.1.3 An employee may be suspended from duty on ordinary pay pending completion of an investigation. For serious matters, the suspension may be without pay, but this would need to be approved by the Chair of WSUIC Board. In such circumstances, the employee should be informed in writing of the conditions of the suspension at the time of the suspension. The time period for which the employee is suspended should not be for an unreasonable duration and must be nominated in consultation with Navitas HR.

### **10.2 Disciplinary Meetings**

10.2.1 The employee needs to be given advance notice of any disciplinary meeting and what will be discussed at the meeting. They should also be given a reasonable opportunity to have a support person present at the meeting.

10.2.2 The discussion must provide the employee with:

10.2.2.1 Reason(s) for the discussion (i.e. the behaviour(s) that are of concern) including any evidence upon which those concerns are based.

10.2.2.2 An opportunity to provide a written response to the concerns or allegations.

10.2.3 A manager may want to have a colleague or a Navitas Human Resources Shared Services representative present at a formal performance discussion to ensure that the details of the discussion can be corroborated, and relevant advice offered.

### **10.3 Disciplinary Process**



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- 10.3.1 Where there is persistent unresolved unsatisfactory performance or an allegation of misconduct or serious misconduct against an employee, the manager or other delegated officer will make reasonable enquiries to establish the facts of the matter and talk to the employee who is the subject of the allegation. Where appropriate, the manager will attempt to resolve the matter.
- 10.3.2 If it is considered that the allegations warrant no further action or should be dismissed, the manager will advise the employee accordingly and the matter will be closed. At this stage, the manager may feel it appropriate to issue a verbal warning.
- 10.3.3 If it is considered that the allegations warrant being taken furthermore formally, then the manager, in consultation with Navitas HR, will need to determine whether:
- 10.3.3.1 The issue needs to be investigated more formally or
  - 10.3.3.2 The manager proceeds to directly notifying the employee in writing and in sufficient detail, including any evidence which is available, to enable the employee to understand the precise nature of the allegations and ask the employee to properly consider and respond to them and submit a written response within ten (10) working days.
- 10.3.4 Where an investigation has been undertaken, depending on the outcome, the manager may decide to follow actions as set out at 10.3.2, or proceed to 10.3.3b.
- 10.3.5 Depending on the employee's response to the allegations, the manager may take one of the actions listed below and advise the employee accordingly:
- 10.3.5.1 Dismiss the matter and take no further action or
  - 10.3.5.2 Counsel and/or censure the employee for unsatisfactory behaviour or performance and/or
  - 10.3.5.3 Refer the person on to a further action plan and/or arrange for appropriate professional development or
  - 10.3.5.4 Provide a written warning.

## **10.4 Written Warning**

- 10.4.1 The written warning should:
- 10.4.1.1 Describe the unsatisfactory performance and/or conduct.
  - 10.4.1.2 Detail WSUIC standards and expectations relating to the performance issue.
  - 10.4.1.3 Detail the action(s)/improvement(s) required.
  - 10.4.1.4 Clearly specify the potential consequences of not achieving the required improvement or if the reason(s) for the warning continues or is repeated.
  - 10.4.1.5 Detail and include a list of attached documentation.
  - 10.4.1.6 Include the date of review and the agreed follow up date.



- 10.4.2 The Navitas Discipline Report Form has been developed to assist managers in the preparation of a written warning. However, a written warning does not necessarily need to be completed using this form. A manager may elect to cover each of the elements described in the previous paragraph in a letter or file note format.
- 10.4.3 A copy of the written warning must be given to the employee and a copy signed by both the manager and employee will be sent to Navitas HR to be placed on the employee's personnel file as a permanent record. If the employee refuses to sign the warning, the manager should note this on the written warning and arrange for the document to be placed on the employee's personnel file.
- 10.4.4 Federal employment legislation does not prescribe the number of warnings an employee must receive in order to lawfully terminate employment. The manager will need to take into consideration all evidence obtained or supplied when determining a case for dismissal.
- 10.4.5 It is important to note that the details of any discussion and the written warning may be subject to scrutiny by the Australian Industrial Relations Commission if the matter develops into an unfair dismissal claim.

## **10.5 Final Warning**

- 10.5.1 If there is a failure to improve conduct or performance after one or more written warning/s have been issued, or if the issue is sufficiently serious to warrant only one written warning (a first and final warning), a final written warning may be given to the staff member. Final warnings are issued when WSUIC wants to convey that further poor performance/misconduct will not be tolerated and that a repeat may lead to termination of the employment.
- 10.5.2 Whilst there is no specific requirement to have a number of written warnings preceding a final warning, the principles of substantive and procedural fairness apply. Subject to these principles, it would be expected that an employee being managed for a performance issue, would have received sufficient prior warning to reasonably address the issue in question prior to receiving a final warning.
- 10.5.3 An employee who, after receiving a final warning, repeats the inappropriate behaviour may not immediately be dismissed. The manager must take into account any mitigating factors resulting from the employee's response to the issue(s).
- 10.5.4 Final warnings should only be issued after consultation with Navitas Human Resources Shared Services. A member of Navitas Human Resources Shared Services may attend performance discussions where a final warning is likely to be issued and/or when termination of employment is a possible outcome.

## **10.6 Dismissal and Dismissal without Notice**

- 10.6.1 Dismissal is a broad term covering the termination of an employee's contract of





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employment by WSUIC. The reasons for dismissal of an employee can be numerous.

10.6.2 Where a staff member's employment is terminated, the notice period stipulated in the Fair Work Act 2009, or other Agreement or the person's contract (where relevant) will be paid, except in instances of "serious misconduct" as defined in the Act.

10.6.3 The occurrence of conduct that falls within the definition of "serious misconduct" does not in itself guarantee the right to dismiss an employee without notice. Any factors (both internal and external WSUIC) that may mitigate the decision to dismiss the employee must be taken into consideration.

10.6.4 If the decision is made to terminate the employee's contract of employment with WSUIC, the manager will need to provide documentation to Navitas Human Resources Shared Services so that the following can be prepared provided to the employee:

10.6.4.1 Written notice of the day of the termination of his/her employment or payment in lieu of notice, except where the termination is due to serious misconduct.

10.6.4.2 Payment of all accrued entitlements.

10.6.4.3 Payment of any outstanding entitlements.

10.6.4.4 A Separation Certificate (upon the employee's request).

10.6.4.5 A Statement of Service (upon the employee's request).

## **10.7 Employee Records**

Written warnings and information pertaining to the warning must not be removed from an employee's personal file. If a manager is satisfied with the employee's performance following a performance discussion, the manager may place a supplementary file note to that effect in the employee's personnel file.

## **11. Quality and Compliance**

11.1 This policy is reviewed periodically (at a minimum every two years) to ensure regulatory compliance, operational currency, the identification of continuous improvement opportunities and risk identification and mitigation. This review is reflected in WSUIC's Risk Management Framework.

11.2 This policy will be available on the WSUIC website for students and the WSUIC SharePoint site for staff access.

11.3 Emails will be issued to all staff to inform and update them on any changes to the policy and/or procedures and guidelines.

11.4 New staff will receive policy information during the induction process where it relates to their position.



**12. Related Forms and Documents**

WSUIC Discipline Report Form

**13. Related Policies, Procedures, Guidelines, Rule and Legislation**

- Navitas Drug and Alcohol Policy
- Fair Work Act 2009
- Navitas Disciplinary Policy for Operations Based in Australia
- Navitas Human Resources Procedures including Managing Unsatisfactory Performance Policy and Procedure
- WSUIC Services Agreement with Navitas (Schedule 1 Services to be Provided by Navitas, Item 6 Payroll and Human Resources)
- Higher Education Standards Framework (Threshold Standards) 2015 Section 3 Teaching Item 3.2 Staffing, Section 5 Institutional Quality Assurance Item 5.3 Monitoring, Review and Improvement
- POL 44 WSUIC Staff Grievance Management Policy
- POL 21 Staff Code of Conduct

**Approval and Amendment History**

<b>Approval Authority:</b>	Western Sydney University International College Board of Directors
<b>Policy Owners:</b>	Executive
<b>Approval Date:</b>	2 November 2016
<b>Date for Next Review:</b>	22 February 2024

<b>Amendments</b>		
<b>Revision Date</b>	<b>Version</b>	<b>Summary of changes</b>
2/11/2016	1	New policy developed



<b>Amendments</b>		
<b>Revision Date</b>	<b>Version</b>	<b>Summary of changes</b>
25/10/2019	1.1	<p>Minor formatting changes and typographical corrections throughout the document</p> <p>Included reference to consulting with Navitas HR regarding 'reasonable' period of suspension in section relating to investigation (?)</p> <p>Included reference to employee having representation at formal discussion with the manager (?)</p> <p>Included reference to sending a copy of the Discipline Report Form or written warning to Navitas HR for inclusion in the employee's personnel file (?)</p> <p>Reference to Navitas performance management policy and procedures in section 5</p> <p>Deleted introductory statement in section 10 as it's merely repeating stipulations in preceding clauses/sections</p> <p>Amended section 10.1.3 – last sentence rephrased to: The time period for which the employee is suspended should not be for an un reasonable duration and must be nominated in consultation with Navitas HR</p> <p>Amended section 10.4.3 to 'A copy of the written warning must be given to the employee and a copy signed by both the manager and employee will be sent to Navitas HR to be placed on the employee's personnel file as a permanent record. If the employee refuses to sign the warning, the manager should note this on the written warning and arrange for the document to be placed on the employee's personnel file.'</p> <p>10.5.3 – replace 'automatically with 'immediately'</p>
20/10/2021	1.1	Regular Review – No amendments
12/12/2023	1.2	<p>Inclusion in investigation, reference to CDP misconduct</p> <p>Minor grammatical and formatting changes</p>