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STUDENT MISCONDUCT PROCEDURE

Section	Problem Resolution		
Approval Date	18.10.2013	Approved by	Executive Team
Next Review	27.03.2020	Responsibility	Executive Director – Customer Experience and Excellence
Last Reviewed	27.03.2019	Key Evaluation Question	5

PURPOSE

To ensure:

- › Students have a clear understanding of what constitutes student misconduct and the consequences of student misconduct.
- › Staff members of Nelson Marlborough Institute of Technology (NMIT) have clear and consistent procedures to follow when dealing with instances of student misconduct.
- › Students are treated fairly and consistently when student misconduct is alleged, and
- › That the principles of natural justice are adhered to.

SCOPE

The Student Misconduct Procedure applies to:

- › Students of NMIT (including students of NMIT training partners) whether:
 - (a) On NMIT premises; or
 - (b) Off campus on course-related activities.
- › All situations where an allegation of student misconduct is made (from any source), including allegations of academic misconduct (see **Academic Integrity / Academic Misconduct policy**).
- › Situations where an allegation of student misconduct also involves the Police.

The misconduct will be regarded as **serious** if by its nature and/or degree it:

- › Adversely affects (or has the potential to adversely affect) the safety of other students or staff of NMIT; or
- › Is likely to bring the name of NMIT or its quality standards into disrepute; or
- › Involves behaviour considered to be seriously inappropriate for a student of NMIT; or
- › Is part of a number of instances of misconduct committed by the same student. It is not necessary that the instance of misconduct is the same or similar in nature and/or degree to previous instances of misconduct.

Additionally, where a Protection Order is in place, the safety of the student who has obtained the Protection Order is paramount; and that student's rights will be given priority by NMIT over those of the subject of the Protection Order. (Refer to page 7)

NOT IN SCOPE

For students failing to meet academic requirements, refer to ***Unsatisfactory Academic Progress*** policy.

The Student Misconduct Procedure does not replace specific programme regulations, which may also address matters such as what constitutes 'fit and proper' behaviour and drug and alcohol criteria.

DEFINITIONS

Advocate	A person that speaks on behalf of the student.
Allegation	An allegation of misconduct made against a student of NMIT (including students of NMIT training partners)
Disciplinary procedures	Procedures for investigating and dealing with "misconduct" and "serious misconduct".
Exclusion	Studies terminated and student denied the right to study on a NMIT programme (including a programme delivered by NMIT training partners). This may be accompanied by a trespass notice restricting access to all or part of NMIT premises, depending on the decisions made in respect of each case.
External Regulations	A set of principles, rules or law that are set by an organisation other than NMIT, that apply to the programme a student is enrolled on.
Independent Person	<p>For the purpose of this procedure an Independent Person is an NMIT senior manager who is one of the Panel members under the Serious Misconduct Disciplinary Procedure.</p> <p>The NMIT senior manager must be a member of the NMIT Institute Leadership Team, be impartial and have received training on the NMIT Student Misconduct Procedures.</p> <p>The NMIT senior manager will perform the role of an Independent Person for a period of two years. A pool of at least three trained staff members will be available to perform the role of an Independent Person at any given time.</p>
Misconduct	Means 'misconduct' or 'serious misconduct' as the context dictates.
Panel	The group convened to conduct an official hearing under the Serious Misconduct Disciplinary Procedure.
Resolution Facilitator	For the purpose of this procedure means a Curriculum Manager who is not from the programme area where the student is enrolled, or a Business Support Team Leader / Manager. The Resolution Facilitator is appointed by the Quality Enhancement Manager.
SANITI Student President	Represents and works for and on behalf of students. The SANITI Student President sits on NMIT Council, NMIT Academic Board and sub-committees of the Academic Board, ensuring the student voice is heard at all levels of NMIT.
Student	The person against whom an allegation has been made.

Student Case File	<p>In relation to the misconduct disciplinary procedure, the file held by the Resolution Facilitator [and passed to the office of the Quality Enhancement Manager on conclusion of case]; or</p> <p>In relation to the serious misconduct disciplinary procedure, the file held by the office of the Quality Enhancement Manager.</p>
Support Person	<p>Person or group able to provide support or advice to the student e.g. NMIT Student Advisor; student association (SANITI); friend, family member or other trusted person.</p> <p>A support person's role is to empower the student to speak for themselves with knowledgeable support. A support person cannot speak on behalf of the student.</p>
Suspension	<p>Temporary removal of a student studying at NMIT for a set period of time as a result of alleged student misconduct. Suspension conditions may be set that vary depending on the nature and seriousness of the alleged student misconduct.</p>
Training Partner(s)	<p>Organisation(s) or individual(s), with whom NMIT has a contracted arrangement, who provides delivery of training on behalf of NMIT, to NMIT students.</p>

PRINCIPLES

Those involved in the *Student Misconduct Procedure* must observe the utmost confidentiality so as to protect individual privacy. All information relating to the allegation will remain confidential to those parties involved in the case and will not be divulged to outside parties or agencies, with the following exceptions:

- Of any cases relating to criminal activity or activities which contravene any external regulations;
- Where a party is at risk of causing harm to themselves or others;
- To allow any of the parties (NMIT, the person making the allegation, the student) to take legal advice.

The **principles of natural justice** shall apply, as outlined below:

1. The student will be given all relevant information regarding the allegation, a reasonably adequate opportunity to prepare and present evidence, and to respond to the arguments presented
2. The person/s deciding on the allegations will be impartial and make a decision based on a balanced and considered assessment of the information
3. Decisions regarding allegations are based on logical proof or evidence

Based on the above **a student has the right to:**

- › Be advised **on procedure NMIT intends to follow** in dealing with the allegation and the potential consequences if substantiated;
- › **Know all relevant details of an allegation** including the name of the person making the allegation, prior to any meetings held to discuss the allegation;
- › Receive **all documentation** relating to the allegation prior to the meeting
- › **Be given sufficient notice of any meetings** they need to attend regarding the allegation to enable them to prepare their response or arrange any representation.
- › **Have a support person and/or advocate** (including legal representation) of their choice present at any

meeting. The student must be notified of this right, in writing, when notice is given of any meeting.

- › Be given a **full opportunity to offer an explanation** for the alleged conduct in a face-to-face meeting with the person or persons responsible for deciding the outcome of any stage of the disciplinary procedures, prior to any decision being made.
- › **Attend class for courses they are enrolled on** unless the Resolution Facilitator at his/her absolute discretion deems this inappropriate due to the nature of the alleged misconduct.
- › Be **given the option** or right to sit in on all formal meetings and evidence collection meetings, and to ask questions of witnesses at a designated time.

RESPONSIBILITIES

All NMIT staff (including NMIT training partners), CE and NMIT Council members are expected to initiate this procedure should they identify alleged student misconduct/serious misconduct.

The Quality Enhancement Manager is responsible for appointing a Resolution Facilitator.

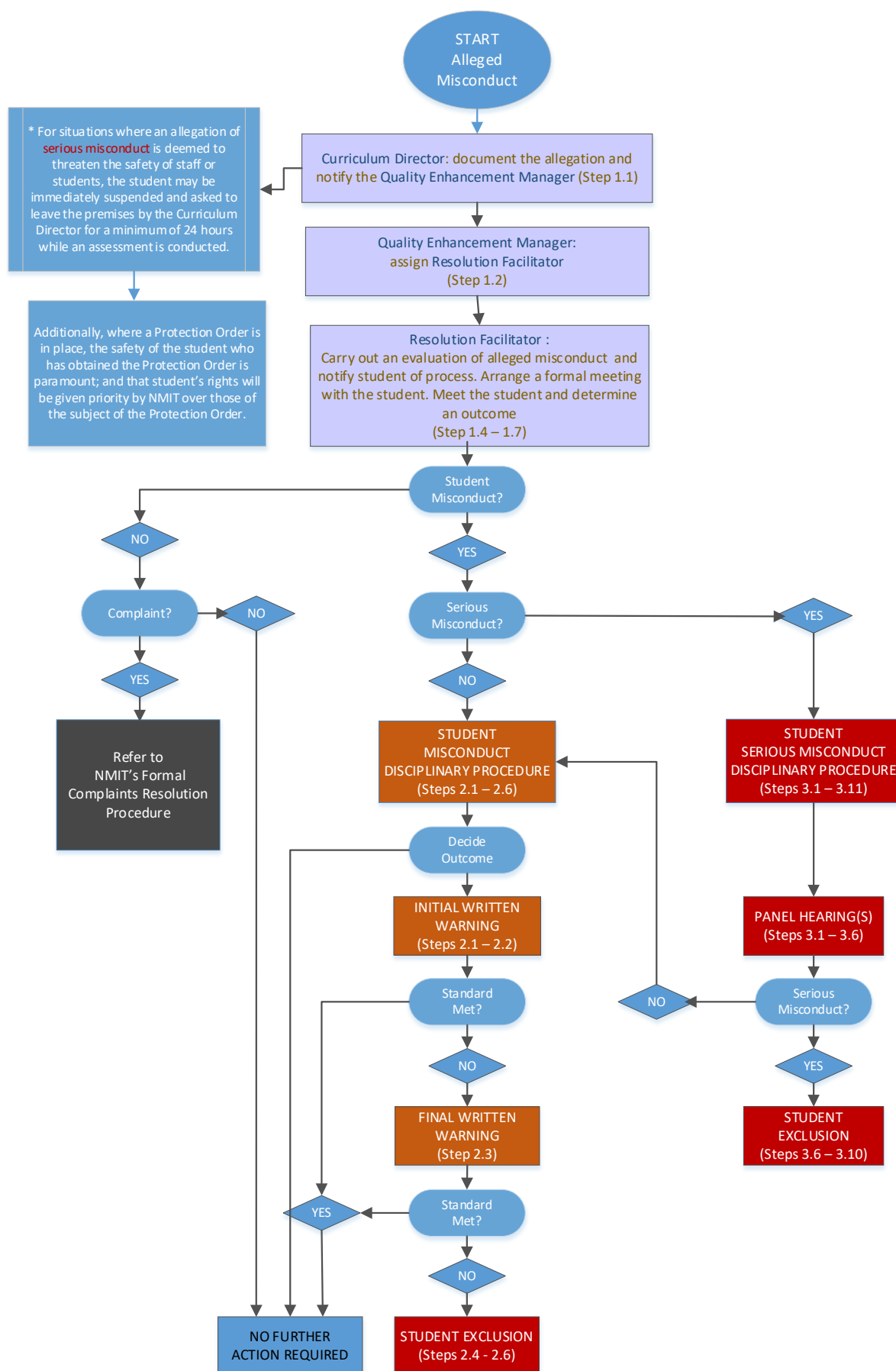
If the **Resolution Facilitator** requires advice regarding which procedure applies, they should consult the **Quality Enhancement Manager** who will, after taking advice as he/she considers necessary, identify the disciplinary procedure to be followed.

The **Resolution Facilitator** shall ensure that both parties (the person making the allegation and the person against whom the allegation has been made) are kept informed of the progress and outcome of the allegation.

Students shall comply with the *Student Charter*, and *Student Rules* and the *Programme Regulations* on which they are enrolled. These documents should be read in conjunction with these procedures.

NMIT shall not be responsible for any costs incurred by the student, the support person or the advocate.

OVERVIEW OF STUDENT MISCONDUCT PROCEDURE



All allegations must be made in writing. An allegation must be specific and include the following information:

- › Date of writing
- › Date and time of incident
- › Name of person making the allegation
- › Preferred contact details e.g. phone (home or other) and/or email address
- › Name of the student against whom the allegation is being made
- › Title of the programme this student is enrolled on
- › Clear details of incidents along with any evidence available attached or referenced

Any changes to the nature of an allegation need to be put in writing.

All procedures will be initiated as promptly as is reasonably possible having regard to the nature of the allegation.

The parties attending any meeting under these procedures shall be notified in advance of the roles of others attending (including support people, legal advisors).

Any issue, in the opinion of the person or body deciding on the outcome of an allegation, that remains ambiguous will be interpreted in favour of the student.

All information relating to student misconduct will be removed from the Student Case File and destroyed once the student has completed the programme of study it relates to, or 12 months from the final decision, whichever is the greater.

Excluded students may be withdrawn from any courses not yet started, and associated fees may be refunded as appropriate (Refer: *Withdrawal Policy and Withdrawal Procedure*).

Where **serious misconduct** is alleged the following actions may be taken:

- › For situations where an allegation of serious misconduct is deemed to **threaten the safety** of staff or students, the student may be immediately suspended (by the Curriculum Manager responsible for the programme the student is enrolled on) and asked to leave the premises. The student must remain off the premises for **at least 24 hours** while the alleged misconduct is dealt with through due process.
- › The Executive Director – Learning Innovation and Delivery or delegate has authority to **suspend** a student for another five teaching days. (In addition to, and following, the 24-hour suspension instigated by the Curriculum Manager.)
- › The Chief Executive (CE) has authority to extend times by the minimum needed as a result of unavoidable delays.
- › The student shall be informed of the procedure that will be followed and shall be given written details of the suspension including reason, start date, duration and prohibitions during suspension.
- › Where a student has a Protection Order placed against them in respect of another NMIT student, the offending student may be excluded from NMIT for the duration of the other student's studies.
- › Where criminal activity is inferred, the Executive Director – Learning Innovation and Delivery or delegate will, at the time he/she considers appropriate, contact the Police and keep them informed on progress of the investigations.

STEP	EVALUATION OF ALLEGED MISCONDUCT	RESPONSIBILITY
1.1	<p>Where student misconduct is alleged, document the allegation, assign a unique code to the allegation (student initials and 6-digit date e.g. AB010517) and notify the Quality Enhancement Manager.</p> <p><i>For situations where an allegation of misconduct is deemed to threaten the safety of staff or students, the student may be immediately suspended by the Curriculum Director, and asked to leave the premises for no less than 24 hours.</i></p>	Curriculum Director
1.2	Assign a Resolution Facilitator .	Quality Enhancement Manager
1.3	<p>Using the Summary Document (available on the <i>Forms, Templates and Guidelines</i> section of the QMS) record the process.</p> <p>Note: At any point the Resolution Facilitator, in consultation with the Quality Enhancement Manager, may determine that the allegation be treated directly through the serious misconduct disciplinary procedure (Step 3).</p>	Resolution Facilitator
1.4	Notify student of alleged misconduct , and that a meeting will be arranged to assess the validity of the allegation. Advise or arrange suitable support or advocacy for the student as early as possible.	Resolution Facilitator
1.5	<p>Arrange formal meeting with student (using the Alleged Misconduct Meeting Request Template, available on the <i>Forms, Templates and Guidelines</i> section of the QMS):</p> <ul style="list-style-type: none"> › Agree on communication method and ensure correct email / phone details › Set meeting for mutually agreeable time as soon as practicable. › Advise student as to who will be at the meeting and of their right to bring a support person and/or advocate. › Provide to the student: <ul style="list-style-type: none"> a. The written allegation at least 2 days prior to meeting or at a time parties agree to; and b. Advice on potential consequences should the allegation be substantiated; and c. All relevant details of the allegation including the name of the person making the allegation and any evidence that will be presented at the meetings. › Provide a copy of the Student Misconduct Procedure and any other relevant documents. 	Resolution Facilitator
1.6	<p>Meet with student</p> <ul style="list-style-type: none"> › Advise student of all matters known to the Resolution Facilitator and relevant to the allegation. › Give student opportunity to respond › Record what is said at the meeting, using a Digital Voice Recorder or equivalent. › Call on others (e.g. the person making the allegation, fellow students) if required, to clarify situation 	Resolution Facilitator
1.7	<p>Determine whether there are sufficient grounds for the alleged misconduct to be:</p> <p>Not upheld. No further action shall be taken and both parties (student and the person making the allegation) are notified.</p> <p style="text-align: right;">(contd. overleaf)</p>	Resolution Facilitator

	<p>Upheld (not Serious) Follow the MISCONDUCT DISCIPLINARY PROCEDURE (p.9) or</p> <p>Upheld (and Serious) Notify the Quality Enhancement Manager and the student of this outcome. Follow the SERIOUS MISCONDUCT DISCIPLINARY PROCEDURE (p.10)</p>	
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STEP	MISCONDUCT DISCIPLINARY PROCEDURE:	RESPONSIBILITY
2.1	<p>Issue an initial written warning detailing:</p> <ul style="list-style-type: none"> › Remedial action student is required to take. › Required standard of conduct. › How student's conduct differs from required standard. › Condition/s student is required to meet and related timeframes. › That a final written warning will result if conditions not met within the prescribed timeframe. › Duration of the warning (twelve months maximum). 	Resolution Facilitator
2.2	<p>Conclude the Summary Document and have the student sign it. If the student does not sign, note the summary: "delivered, not attested".</p> <p>File the Summary Document and a copy of the written allegation in the Student Case File and give a copy to the student.</p>	Resolution Facilitator
2.3	<p>If the standard required (as set out in the initial written warning) is met within the prescribed timeframe, no further action is required.</p> <p>If the standard required (as set out in the initial written warning) is not met within the prescribed timeframe,</p> <ul style="list-style-type: none"> › Issue a final written warning or › Refer to Quality Enhancement Manager for possible initiation of Serious Misconduct Procedure. 	Resolution Facilitator
2.4	<p>If the standard required (as set out in the final written warning) is met within the prescribed timeframe, no further action is required.</p> <p>If the standard required (as set out in the final written warning) is not met within the prescribed timeframe:</p> <ul style="list-style-type: none"> › Consult with the Quality Enhancement Manager to ensure a fair and equitable process has been followed. › Decide appropriate outcome for the student in consultation with the Quality Enhancement Manager. This may include exclusion from NMIT. › Advise the student in writing of the outcome including the re-entry criteria once any period of exclusion expires and the right and grounds of appeal. Place a copy in the Student Case File. 	Resolution Facilitator
2.5	<p>Withdraw student from any courses not yet started, and refund associated fees as appropriate (Refer: <i>Withdrawal from NMIT Programmes and Courses</i>).</p>	Curriculum Director or Curriculum Manager
2.6	<p>Remove and destroy all information relating to student misconduct from the Student Case File once the academic year it relates to is complete or twelve months from the final decision, whichever is the greater.</p>	Quality Enhancement Manager

STEP	SERIOUS MISCONDUCT DISCIPLINARY PROCEDURE	RESPONSIBILITY
3.1	Advise Quality Enhancement Manager immediately of serious misconduct Provide written report to Quality Enhancement Manager and the student. Include details of serious misconduct, the result of the initial assessment and recommendations.	Resolution Facilitator
3.2	Determine if further action is required	Quality Enhancement Manager
3.3	If further action is not recommended: <ul style="list-style-type: none"> › Follow the MISCONDUCT DISCIPLINARY PROCEDURE. › Advise student and the person/s who made allegation of this outcome. 	Resolution Facilitator
3.4	If further action is recommended <ul style="list-style-type: none"> › Convene a panel comprising: Quality Enhancement Manager (Chair) SANITI Student President; an Independent Person. 	Quality Enhancement Manager
3.5	Hold a confidential panel meeting after receiving report in accordance with 3.1 from Resolution Facilitator. <ul style="list-style-type: none"> › The panel should meet individually with the Resolution Facilitator, the person/s making the allegation and the student. › The student has the right to be present to hear the allegation in person if they so wish. In some instances, to mitigate distress, the Panel may agree to the use of audio technology. › The student has the right to respond to the allegation, during their individual meeting with the panel. › The student is entitled to have a support person and/or advocate present at the panel meeting. › All matters under consideration by the panel in determining an outcome in respect of the enquiry must be put to the student. › Other parties should be interviewed if further information is required. › Proceedings should be recorded and a copy made available to the student. 	Panel (Quality Enhancement Manager to coordinate and chair meetings)
3.6	If the allegation of serious misconduct is substantiated the outcome will be exclusion from NMIT for a minimum period of six months.	
3.7	Sign Summary Document	Panel
3.8	Inform the student in writing of: <ul style="list-style-type: none"> › Panel decision with signed Summary Document attached. › That once any exclusion period expires normal re-entry criteria and any additional special requirements that are required to be met. › The right and grounds of appeal. Request that the student sign to confirm that they have read the Summary Document. Request student returns signed document. If student does not sign then submit summary as “delivered, not attested”.	Quality Enhancement Manager

3.9	File copy of completed Summary Document , letter to student, any panel reports and Summary Document in the Student Case File .	Quality Enhancement Manager
3.10	Withdraw student from any courses not yet started, and refund associated fees as appropriate (Refer: <i>Withdrawal Policy</i>).	Curriculum Director or Curriculum Manager to initiate
3.11	Remove and destroy all information relating to student misconduct from the Student Case File once the programme of study it relates to is complete, or within 12 months from the final decision, whichever is the greater.	Quality Enhancement Manager and Curriculum Manager

APPEALS

Appeals by the Student shall be only on the grounds that the disciplinary procedures have not been correctly followed and shall be made in writing to the Chief Executive within 10 working days of receiving the Summary Document. The appeal must state specific details of how the disciplinary procedures have not been correctly followed.

REPLACEMENT AUTHORITIES

The following are authorised to act in the absence of those designated with "responsibility" in the disciplinary procedures.

POSITION	REPLACEMENT
Chief Executive (CE)	Executive Director – Learning Innovation and Delivery or other Director
Quality Enhancement Manager	Executive Director – Learning Innovation and Delivery
SANITI Student President	Senior Student Association Executive Member
Executive Director – Learning Innovation and Delivery	Executive Director – Customer Experience and Excellence
Curriculum Director	Another Curriculum Director or Curriculum Manager, from a programme area independent of the allegation

REFERENCES

LEGAL

Legal Opinion:	Duncan Cotterill	28.10.2016
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INTERNAL

[Formal Complaints Resolution Procedure](#)

Programme Regulations

[Unsatisfactory Academic Progress](#)

[Student Charter](#)

[Student Misconduct – Alleged Misconduct Meeting Request \[Template\]](#) (available for NMIT staff only)

[Student Misconduct – Summary Document](#) (available for NMIT staff only)

[Student Problem Resolution Framework](#)

[Student Rules](#)

[Withdrawal Policy](#)

[Withdrawal Procedure](#)

EXTERNAL

Education Act 1989, Section 224 (13)