

# Non-academic Misconduct Procedure

## Document Summary

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## **1: Introduction**

1.1 The City College is committed to providing a learning environment in which students can fulfil their potential and participate freely in College activities. Students are required at all times (both on and off College premises and not just during term time) to comply with all College rules, regulations, codes, conditions, policies and procedures, including the Student Code of Conduct. This includes (but is not limited to) when on a course or other College related activities such as placements and trips. In the event of failure by a student to comply with any College rules, regulations, codes, policies or procedures, the College may implement the Procedures set out below.

1.2 All staff are expected to help and support students in achieving high standards of performance and behaviour. All members of staff have a responsibility to ensure that student discipline is maintained.

1.3 Where references are made to “working days” in this policy, these are considered to be Monday to Friday (inclusive).

## **2: Principles**

2.1 The procedure applies to all individuals enrolled as a student of the College. Each case will be investigated on its facts, and decisions will normally be based on the balance of probability that an incident did or did not take place.

2.2 The student disciplinary procedure applies in cases of student misconduct and is designed to:

- safeguard the welfare of students and staff
- ensure procedural fairness
- encourage all students to meet the standards of behaviour required by the College
- ensure consistent and just treatment for all regardless of disability, age, race, gender, religion and belief, sexual orientation, gender reassignment, pregnancy and maternity
- ensure that the facts are established, and the matter is investigated fully before disciplinary action is taken
- ensure that students know what is expected of them
- ensure that students are given access to a fair Hearing
- protect the College’s reputation.

2.3 These Procedures may be implemented at any Stage without a previous Stage having first been implemented or exhausted, depending on the circumstances.

### **3: Misconduct**

3.1 Misconduct is an act or failure to act by a student which is unlawful or otherwise judged to be inappropriate or unacceptable behaviour where that behaviour does or could negatively affect the College in any way or any person or entity associated with the College.

3.2 Serious misconduct is misconduct which appears in the reasonable opinion of the College to be significant due to its impact on the College, the person or the property affected by the misconduct.

3.3 Examples of misconduct and serious misconduct can be found in 16 below; this is a guide and is not exhaustive and may be updated from time to time by the College.

3.4 Where a student's conduct is the subject of a criminal investigation, no immediate action will necessarily be taken under this Procedure. If the matter is not being dealt with under the criminal process or where the criminal process has concluded, then the College will proceed under these using this Procedure.

### **4: Police involvement**

4.1 If any criminal activity by a student is suspected, the College will normally involve the Police and reserves the right to pursue matters through legal process. In the event of an emergency, any staff member may call the Police, although normally this will be done by the Managing Director or Director of Student Records.

4.2 In matters involving suspected criminal activity, the College may postpone taking any action under these Procedures pending the outcome of any stage of any Police or criminal investigation or proceedings.

4.3 The College is not bound by the outcome of criminal proceedings.

4.4 Where a student is escorted from College premises by the Police, the student is deemed to be automatically suspended, and a letter confirming suspension (total or partial e.g. from particular activities, services or locations) will be sent to the student's notified address. The notified address is the address held by the College on the student record system.

## **5: Initiating the Procedure and Temporary Exclusion**

5.1 Where an allegation is raised about a student and immediate action is required to safeguard all relevant parties, the Managing Director or Director of Student Records may temporarily exclude the student from study (and/ or their placement unless the student is also an employee) with immediate effect for up to five working days from the receipt of the allegation while appropriate means of addressing the situation are considered. Action taken by the College shall be without prejudice to the outcome of any enquiry.

5.2 Written reasons for the decision shall be recorded and notified to the student, together with any conditions that need to be met before the exclusion can be lifted. Temporary exclusion is a neutral act and not a sanction and does not imply that any decisions have been made about the student or the case. It will be for no longer than the College deems necessary to complete any investigations and/ or hold a Hearing if required. Temporary exclusions may be extended by the Managing Director or Director of Student Records if necessary to take into account any developments or representations made by the student. The student will be kept informed of all such decisions being made. Further details on temporary exclusion are given in 17 below.

5.3 Breach of an exclusion notice, as noted on 5.1 above, will also be regarded as a breach of the Non-academic Disciplinary Procedure.

## **6: Confidentiality**

6.1 The College will process all personal information in accordance with the General Data Protection Regulation 2018 and its Privacy Policy (available on Sharepoint and the website).

6.2 The College will disclose information to:

- inform the student of the allegations made and give them an opportunity to respond as required by natural justice
- to allow an investigation to be carried out properly
- for the discharge of its duties or as required by law.

6.3 There may be exceptional cases where it is appropriate to preserve confidentiality in relation to the identity of witnesses where there is reasonably perceived to be a need to protect any students or members of staff from the risk of intimidation or retribution.

6.4 The College may also adapt the procedures below where it is considered undesirable for any one person to give evidence in the presence of another.

6.5 Where a student against whom allegations have been made is not aware of the identity of all those who have given evidence, due weight to this factor must be given, and their response to the allegations must be seen in this context. Natural justice

must be observed, meaning that such a student has the right to understand the case made against them fully.

6.6 Audio and/ or visual recording of meetings and Hearings are not permitted. If due to exceptional circumstances, it is agreed in advance that recordings are permitted, the recording is confidential and must not be copied, shared with any third party, published or disseminated in any way. A true and complete copy of the recording of the meeting must be provided to the other party as soon as possible after the recording was made.

## **7: Student advised of allegation**

7.1 When the College receives an allegation, and after it has understood the scope of the allegations, the College will advise the student(s) concerned of the scope of the allegations, explain the processes involved and any temporary measures which will be put in place. The College may do this in writing or at a preliminary meeting which is followed up in writing.

## **8: Investigations**

8.1 The purpose of an investigation is for the College to gather the facts and evidence relating to any allegations of student non-academic misconduct against the student to determine if there are sufficient grounds or evidence to proceed with the matter or whether it should be dismissed.

8.2 The scope of investigation required will depend on the nature of the allegations, any possible counter-allegations made and will vary from case-to-case. It may involve interviewing and taking statements from the student, the person making the allegations, witnesses, and/ or reviewing relevant documents.

8.3 The College will appoint an investigator and others to co-ordinate and assist in managing the case. Appropriate methods for gathering evidence will normally include:

- Collecting all relevant papers, reports and documents
- Interviewing the student concerned, who may be accompanied by a 'Friend' of their choice (the role of the 'Friend' is outlined in section 15 below)
- Interviews with relevant College staff, students, professional or practise partner colleagues/ employers

8.4 The investigator will prepare a report within 20 working days of the case being referred to them, which sets out the findings during the investigation and a recommendation as to whether there are sufficient grounds or evidence to proceed to a Hearing.

8.5 During an investigation, if a student admits to the allegations raised, this will be recorded in the investigation report, and a disciplinary Hearing will not need to be held at all or in respect of the misconduct which is admitted. The student may still

submit evidence in mitigation to be taken into account when determining the sanction to be imposed. Any sanction awarded will be decided by the Managing Director or Director of Student Records.

8.6 On completion of an investigation, the investigator will write a report which will recommend either:

- No further action

Cases of misconduct to be considered by a subset of the Non-Academic Misconduct Panel at a Hearing as approved by the Managing Director or Director of Student Records as the Chair. This must include the Chair and one other senior member of staff

- Cases of serious misconduct to be considered by the full Non-Academic Misconduct Panel. The full Panel consists of Managing Director or Director of Student Records as the Chair and two senior members of staff.

## **9: Notice of a Hearing**

9.1 If the investigation confirms there are sufficient grounds for a Hearing, the student will be required to attend either the subset of or full Non-Academic Misconduct Panel.

9.2 Within 10 working days of a decision to proceed to a Hearing, the College and the student will supply to one another the following:

- a summary of relevant information each intends to rely on at the Hearing
- a copy of any relevant documents which each intends to rely on at the Hearing
- a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case the party will give the other as much information as possible while maintaining confidentiality
- the names of any witnesses each party intends to call.

9.3 Following this exchange of information, the College will estimate the duration of the Hearing and may discuss with the student ways in which to manage the time available for the Hearing.

9.4 The College will give the student written notice of the date, time and place of the Hearing once it has been arranged. The Hearing will be held as soon as reasonably practicable and normally within 20 working days following the exchange of documents identified in 9.2 above.

## **10: The Non-academic Misconduct Panel Hearing proceedings (subset or full)**

10.1 The Non-academic Misconduct Panel will operate on the principle of 'the balance of probability' rather than that of 'beyond reasonable doubt'.

10.2 Where a vote is required, the majority decision of the Panel members will be taken. In the case of an equally split decision, the outcome should fall in the student's favour.

10.3 The conduct of the Non-academic Misconduct Panel is at the discretion of the Chair but shall normally proceed as follows:

- The members of the Panel have a preliminary discussion in private  
The student, the student's 'Friend' and the investigator enter the room, and the Chair introduces all those present
- The Chair checks that each party has received the summary of relevant information, copies of any relevant documents and witness statements, and the names of any witnesses to be called (as identified in 9.2 above)
- The Chair explains the order of proceedings to the student
- The investigator will present the case and call witnesses as required
- The student will be entitled to question the investigator but not witnesses unless, in exceptional circumstances, the College decides that a fair Hearing could not otherwise be held or where the likely sanction to be imposed by the College is one of temporary suspension (total or partial e.g. from particular activities, services or locations) or permanent expulsion
- The student will be given the opportunity to present their case (including any mitigation) and to call on any witnesses as required
- The investigator will be entitled to question the student
- The Panel will be entitled to question the investigator, the student, and any witnesses as required
- Exceptionally the Panel has the power to call witnesses who shall only attend to present their evidence and to answer questions that the Panel or other party may put to them through the Chair. Once their evidence has been heard and there are no more questions, witnesses shall be required to withdraw
- The Chair invites the investigator to make any final response
- The Chair invites the student to make any final response
- The student, the student's 'Friend', and the investigator are then asked to leave the room. The Panel then deliberates alone and comes to a decision. If the Panel is unable to reach a decision, then the Panel may be adjourned
- If the Panel finds on the balance of probability that the case is proven, they determine any further action or sanction and clarify the reasons for their decision.

10.4 The Panel shall have the power to seek such other evidence as it deems necessary. The Panel may be adjourned to allow for such evidence to be gathered.

## **11: The Non-academic Misconduct Panel's decision and sanctions**

11.1 If the Panel decides the case for misconduct is not proven, it may decide that no further action is required. If the Panel considers that the case for misconduct is proven, then it shall have the power to levy any one or combination of the following:

- A written apology including a piece which reflects on the student's behaviour to be provided to an aggrieved party
- A verbal warning  
A written warning
- A final written warning
- Temporary suspension (total or partial e.g. from particular activities, services or locations) - action taken by the Managing Director or Director of Student Records following a recommendation from the full Panel only
- Permanent expulsion - action taken by the Managing Director or Director of Student Records following a recommendation from the full Panel only.

11.2 Where appropriate, the College may choose to suspend the implementation of one or more sanctions if the student has shown remorse and undertakes to significantly improve their conduct. Positive action to improve conduct will need to be demonstrated to the College, and the college will determine how this will be monitored.

11.3 If a student admits an allegation at any stage of the procedure, the College may levy a sanction for that misconduct without progressing through the next stage of the procedure for sanctions requiring action by the Managing Director or Director of Student Records. If a student wishes certain facts to be taken into account before a sanction is imposed, they should submit a written statement (with evidence where appropriate) together with their admission, and the College will consider this in deciding the sanction. Any sanction awarded will be decided by the Chair of the Non-academic Misconduct Panel. The College may also look favourably on students making early admissions.

## **12: After the Hearing**

12.1 The Chair shall confirm to the student and the investigator concerned in writing within five working days the decision, the reason for the decision and details of any sanction or further action. The student shall be informed of the right to appeal against the decision in accordance with the appeal section in 13 below.

## **13: Appeals against the decision of the Non-academic Misconduct Panel (the final internal stage)**

13.1 A student may appeal against the decision of a Non-academic Misconduct Panel to the Managing Director or Director of Student Records (whoever has not been involved in the case to date) in writing, stating the grounds of the appeal and attaching all supporting evidence. Students must do so within 10 working days of the letter confirming the Panel's decision.



13.2 Issues which are eligible for appeal and are capable of being decided on the papers (i.e. without an appeal Hearing) will be decided accordingly. A Hearing must be held for appeals against a sanction of suspension (total or partial e.g. from particular activities, services or locations) or permanent expulsion.

13.3 The grounds for the appeal shall be one or more of the following on which a student may appeal are that:

- there is evidence now available, which for good reason was not available to the Non-academic Misconduct Panel that might have materially affected the outcome
- the College did not follow the Non-academic Misconduct Procedure in a way which disadvantaged the student's case
- there is evidence of prejudice and/or bias during the procedures
- on the balance of probabilities, the facts of the case do not justify the decision that was reached
- the action applied by the Non-academic Misconduct Panel was disproportionate with regard to all the circumstances of the case or was not permitted under the Non-academic Misconduct procedure.

13.4 The College will endeavour to complete the appeal proceedings within 20 working days from receipt of the appeal and supporting evidence. During this time, the student must meet all deadlines set. Occasionally there will be circumstances when, for good reason, the College will need to extend the timeframe. Where this is the case, the student will be notified and kept regularly informed of progress.

13.5 In the event of an appeal, the Managing Director or Director of Student Records dealing with the appeal and a senior member of the academic staff not involved in the case to date will decide whether the grounds for the appeal are covered by the provisions in 13.4 above and warrant further consideration by a Non-academic Misconduct Appeals Panel. If they agree that there are no grounds for further consideration of the appeal, the Managing Director or Director of Student Records will inform the student in writing, giving the reasons for that decision.

13.6 If the Managing Director or Director of Student Records dealing with the appeal decide that the appeal does warrant further consideration, they will refer the case to a Non-academic Misconduct Appeals Panel which shall normally be comprised of:

- the Managing Director or Director of Student Records dealing with the appeal as Chair and one senior member of the academic staff (who has not been involved in the case to date) for sanctions up-to-and-including a formal written warning
- the Managing Director or Director of Student Records dealing with the appeal as Chair and two senior members of the academic staff (who have not been involved in the

case to date) for sanctions involving suspension (total or partial e.g. from particular activities, services or locations) or permanent expulsion.

13.7 A member of the admin team will attend as Secretary to the Panel to take notes and manage the documents required. The Secretary will provide the Panel with all the documents relating to the original Hearing, together with the written statement and any other evidence submitted by the student setting out the grounds for the appeal.

13.8 The Appeals Panel shall not proceed by way of a re-Hearing but shall have power to require the presentation of such further evidence as it deems necessary. The proceedings of the appeal Hearing will be the same as in the original Hearing (see 10.3 above).

13.9 The Appeals Panel shall have the same powers as the Non-academic Misconduct Panel and may confirm the decision of the Non-academic Misconduct Panel or substitute another decision as it considers appropriate within the powers identified in 11.1 above. If new issues have arisen, the Appeals Panel may also decide that a new Non-academic Misconduct Panel Hearing is required.

13.10 When the Appeals Panel has reached its decision, the student concerned will be informed in writing within five working days of the decision being made.

13.11 The decision of the Appeals Panel is final and completes the College's internal Non-academic Misconduct Procedure.

#### **14: External review by the Office of the Independent Adjudicator (OIA)**

14.1 Once the appeal stage has been completed and the College's internal procedures for dealing with complaints and appeals are therefore exhausted, the College will automatically issue a Completion of Procedures (COP) Letter. A COP Letter confirms the decision made and that the student has reached the end of the College's internal processes.

14.2 If the student's appeal is not upheld and the student does not agree with this decision, the student can apply to the OIA to have the decision reviewed. The COP letter is normally needed when applying to the OIA for a review.

14.3 Applications for review must be submitted to the OIA within 12 months of a COP Letter being issued. The OIA may be contacted by ringing 0118 959 9813. Details of the OIA may be found at <http://www.oiahe.org.uk/students>

14.4 If the matter is concluded before the appeal stage, for example, because the student does not wish to appeal, the student may request a COP Letter if they want one. There is a deadline of one month for the student to make such a request, beginning when the relevant College decision was made.

14.5 If the student makes a request after the deadline has passed, the College will issue a COP Letter containing the date upon which the original Non-academic Misconduct Panel Hearing decision or the Appeal Panel decision was reached. The time for bringing the matter to the OIA will normally run from that date rather than the date of the COP Letter.

### **15: The Role of the 'Friend'**

15.1 The 'Friend' may be an official Student Representative or another member of the College community and is there to provide moral support and to support the student when the student is asking or answering questions during the meetings and/ or Hearings. The 'Friend' may not be a lawyer or legally qualified adviser or representative. The 'Friend' may also take notes of the meetings for the student. While students are normally expected to speak for themselves, the 'Friend' may speak with the agreement of the Chair of the Panel. In the event that the student is unable to continue the meeting in the absence of the 'Friend', the meeting will continue in the absence of the student, based on the oral evidence heard to date and the written documentation.

### **16: Examples of misconduct and serious misconduct**

16.1 It is not possible to identify all examples of misconduct and serious misconduct, and cases of misconduct and serious misconduct will be assessed on a case-by-case basis. Applying a sanction, therefore is dependent on the seriousness of the misconduct.

16.1 Cases of misconduct that may receive a sanction up-to-and-including a final written warning (see 11.1 above) may include:

- deliberate breaches of the Code of Conduct
- rowdiness, disruptive, anti-social behaviour
- rudeness, impolite or inconsiderate behaviour
- behaviour in any part of the College or on placement that interferes with the rights of others e.g. playing music, loud telephone conversations etc.
- disruption of the work or recreation of others
- use of mobile phones in class except with the express agreement of the member of staff when mobile phones are being used to support learning
- offensive language or behaviour
- causing a health or safety concern
- refusal to readily identify themselves
- refusal to comply with a lawful instruction of College staff
- acting in an unsafe manner or not co-operating with safety procedures
- smoking in non-designated areas
- misuse of email, the internet, College resources
- gambling

- disrespect for College or placement staff
- failure to adhere to an employer's rules when on a visit, work placement etc.

16.3 Cases of serious misconduct that may receive a sanction of temporary suspension (total or partial e.g. from particular activities, services or locations) or permanent exclusion (see 11.1 above) may include:

- theft or unauthorised possession of any property or facilities belonging to the College or any member of staff or student
- possession or use of or being under the influence of drink whilst in College or on a College related activity e.g. a placement or trip
- being under the influence of or possession of or use of drugs or other illegal substances (Any prescribed medical treatment or condition will be taken into account when determining what action is appropriate)
- causing a serious safety hazard in the College's premises, such as setting off fire alarms or obstructing access to buildings or rooms
- fighting, violent behaviour, or threatening to use physical violence
- foul language used in an aggressive or threatening manner
- serious negligence which causes unacceptable loss, damage or injury
- repeated or persistent breaches of the Code of Conduct
- deliberate and significant damage to College property or the property of others
- breach of the College's Equal Opportunities Policy
- sexual misconduct
- harassment and hate crimes
- possession or use of a weapon or anything which resembles or which can be used as a weapon
- fraud
- attempting to enter College while suspended
- failure to disclose a criminal conviction (where relevant to nature of the course)
- insubordination or refusal to carry out a legitimate instruction issued by the College
- misuse of computer facilities, including intentionally downloading defamatory, offensive, obscene, malicious or copyright-protected material
- behaviour likely to bring the provider into disrepute, such as disruptive behaviour in the community
- bringing the College into disrepute through any medium or print or social media.

- Other behaviour which may also constitute a criminal offence.

## 17: Temporary Exclusions

17.1 The Managing Director or Director of Student Records may exclude temporarily a student pending the outcome of an investigation under the Non-academic Misconduct Procedure or a meeting of a Non-academic Misconduct Panel, or a meeting of the Non-academic Misconduct Appeals Panel.

17.2 The decision to impose a temporary exclusion is a neutral act and is without prejudice to the outcome of any enquiry under the Non-academic Misconduct Procedure. If the student is also an employee in the work-place, then the College will follow the action taken by the employer instead.

17.3 The power to exclude temporarily under this provision exists to protect service users and other members of the public, service providers, the members of the College community in general or a particular member or members, including the student in question. The power shall be used only where the Managing Director or Director of Student Records is of the opinion that it is necessary to take such action for reasons of safeguarding against risk. Assessment of risk will take account of both the likelihood of harm arising and the potential level of harm. Action may be considered necessary in situations where the risk of harm occurring is low, but the consequences are potentially serious.

17.4 Written reasons for the decision shall be recorded and notified to the student, together with any conditions that need to be met before the exclusion can be lifted. Being a neutral act and not a sanction, a temporary exclusion does not imply that any decisions have been made about the student or the case. It will be for no longer than the College deems necessary to complete any investigations and/ or hold a Hearing if required. Temporary exclusions may be extended by the Managing Director or Director of Student Records, if necessary, to take into account any developments or representations made by the student. The student will be kept informed of all such decisions being made.

17.5 The Managing Director or Director of Student Records may temporarily exclude a student with immediate effect. If a student has been temporarily excluded, they may make representations in person or in writing to the Managing Director or Director of Student Records. The student must do so within five working days of the date of the letter notifying them of the temporary exclusion or as soon as possible afterwards, provided there is good reason why they were prevented from meeting the deadline. If the student attends in person, they may take be accompanied by a 'Friend' if they wish (see 14 above).

17.6 A decision to temporarily exclude a student will be kept under review. Any significant changes in the circumstances of the student's case will be reported to the Managing Director or Director of Student Records. Should an investigation under the Non-academic Misconduct Procedure, or the holding of a Non-academic Misconduct Panel meeting, be delayed for whatever reason, and where the exclusion has continued for at least four weeks, the student may request a review of the decision. A review will be conducted by Managing Director or Director of Student Records, who did not make the decision to exclude, and the student will be given the opportunity to submit written representations and to make representations in

person. Should the exclusion continue after the review, it will be reviewed again every four weeks until a Non-academic Misconduct Panel meeting is held.

