



**STUDENT COURSEWORK PLAGIARISM
AND ACADEMIC MISCONDUCT RULES,
and
STUDENT BEHAVIOURAL MISCONDUCT RULES**

Investigation and Penalty Guidelines

Document Type:	Guidelines
Administering Entity:	Academic Board Office
Trim Ref:	ABC11/4
Date Approved:	22 November 2010
Approved by:	Academic Board
Implementation date:	Semester 1, 2011
Indicative time for Review:	3 years from implementation date
Responsibility for Review:	AB Teaching and Learning Committee
Related Documents:	<ul style="list-style-type: none">• Student Coursework Plagiarism and Misconduct Rules• Avoiding Coursework Plagiarism and Academic Misconduct – Information for Students• International Student Appeals• Residential College Code of Conduct

These Guidelines are provided for members of UNE staff
authorised to conduct student conduct investigations and hearings,
impose penalties and hear appeals

INTRODUCTION

In 2010 the University established new sets of Coursework Plagiarism and Academic Misconduct Rules and Behavioural Misconduct Rules to apply in 2011. The Coursework Plagiarism and Academic Misconduct Rules differ from those replaced in the following ways:

- establishing the central importance of the academic misconduct and plagiarism self-test module as an educational tool;
- distinguishing between the procedures for handling inadvertent and intentional cases of plagiarism;
 - authorising Unit Coordinators to investigate and apply directly penalties for Inadvertent Plagiarism;
 - reserving cases of Intentional Plagiarism for consideration by Heads of Schools;
- providing better separation between the management of cases of Plagiarism and those of Academic Misconduct;
- having closer alignment (especially for acts of Academic Misconduct) with the Student Behavioural Misconduct Rules; and
- limiting the hierarchy of appeals.

These Guidelines are designed to ensure that these matters are handled effectively but quickly and simply, while maintaining throughout the principles of natural justice and procedural fairness.

The application of a disciplinary investigation and penalty process can be stressful for those involved: the alleged offender, any affected persons such as a complainant, the Investigator and the University community generally. In particular, the Investigator may feel under pressure from the authoritative role he or she holds and the potential for resentment from the alleged offender. Managers may want to avoid the disciplinary role or spread the load by invoking an extensive committee hearing and appeal processes.

However, these approaches often cause more problems through the inevitable delays resulting from the process, which often cause more stress and anxiety. The effectiveness of the disciplinary process can also be blunted when outcomes are delayed by weeks or months.

These Guidelines are designed to be read in conjunction with the Rules to provide clarity, additional support, and guidance in determining an appropriate penalty when necessary. Adherence to these Guidelines will help you ensure that the disciplinary process, while sometimes an unwelcome and unattractive duty, is made as simple and painless as possible. It will also help ensure consistency of decision-making and that decisions are appropriate, accord with procedural fairness, and are less subject to challenge. You might also find useful the material available on the NSW Ombudsman's website at the following URL:

<http://www.ombo.nsw.gov.au/guideorganisations/guidepubsecagencies.html>.

Your suggestions for improvement of these Guidelines are always welcome and may be sent to the Secretary of the Academic Board.

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BACKGROUND

The Student Coursework Plagiarism and Academic Misconduct Rules and the Student Behavioural Misconduct Rules are designed in accordance with the principles of natural justice and procedural fairness. These principles need to be kept firmly in mind when applying the Rules in order to provide effective and fair disciplinary action. Following these principles will also help ensure the quality and consistency of disciplinary decision-making and protect the decisions from challenge.

Principles of Natural Justice and Procedural Fairness

Procedural fairness and natural justice essentially refer to the procedures used by a decision maker rather than the outcome of the proceedings. Procedural fairness is more commonly used in the administrative law context.

There are four fundamental planks to natural justice and procedural fairness. These are:

- a hearing appropriate to the circumstances,
- lack of bias,
- evidence to support a decision, and
- clear reasoned decision making.

An appropriate hearing

The alleged offender should receive all the relevant information and in particular must have an opportunity to address any adverse information relating to their case. The decision maker should identify all the relevant issues arising from the inquiry and the alleged offender should be given sufficient opportunity to address those issues and to give evidence and present arguments relating to them.

Lack of bias

The decision maker should not have an interest in the matter being decided and should not appear to bring a biased or prejudiced mind to the inquiry and decision. The decision maker must show an open mind to the case. This refers to the perception of bias as well as actual bias. The test is whether a fair-minded person might reasonably apprehend that the decision maker might not bring an impartial mind to the proceedings.

Evidence to support a decision

The decision maker should make reasonable inquiries or investigations about the case and check the facts and identify the major issues. The decision maker should make clear findings on matters of fact that are material to the decision, and take into account only the relevant factors.

Decision Making

The decision should address the claims made by the alleged offender and reflect genuine consideration of them. The decision should identify the evidence or material on which the findings of fact are made and the reasons of the decision maker for accepting or rejecting a piece of evidence. The decision should reflect all the steps of reasoning linking the findings of fact to the decision.

Criminal Activity

Any suspected criminal activity must be reported to the police.

If unsure, consult the UNE Legal Office legal@une.edu.au
or telephone +61 (0)2 6773 4210 for advice

PLAGIARISM

INVESTIGATIONS [Rules 7, 9]

The Unit Coordinator will normally be the first investigator. Your investigations may be prompted by:

- your own concerns deriving from your expert disciplinary knowledge;
- your own concerns deriving from your previous academic interactions with the student;
- a direct complaint made to you;
- a report from text-matching software such as Turnitin; and/or
- a direction from your Head of School.

Initial Investigation

Start record-keeping immediately—if any verbal allegations are made, they must then be transmitted to you formally in writing/email. If you do accept any initial verbal or telephone statements, you should make contemporaneous notes and initial and date them. [See the proforma at the end of these Guidelines].

Gather the evidence

- Have the Assessment Task analysed for plagiarism (including paraphrasing) by one or more of the following:
 - create your own report detailing the sections(s) of the Assessment Task and its comparison with the sources from which copying is suspected;
 - obtain a text-match report using Turnitin or other appropriate software; and/or
 - run a web search with an appropriate search engine and check the results against the Assessment Task.
- If you have reasonable grounds to suspect that the assessment task was not written by the student, you may request your Head of School to arrange a *viva voce* examination for that student on the relevant topic (Rule 9.10).
- Contact either your Head of School or the School/Faculty Plagiarism Manager to have the student's record checked in the Central Plagiarism/Academic Misconduct File (have the records extracted if a record exists). The reason for this is simple: a record of two or more previously recorded instances of Inadvertent Plagiarism requires the case to be escalated to one of Intentional Plagiarism. In other words, what may appear to you as an isolated instance of inadvertent plagiarism may be part of a pattern of serial 'inadvertent' plagiarism. What might initially have appeared as inadvertent now looks more like intentional. Unless reports are made, such a pattern will never become visible.
- Have the student's academic record checked for:
 - new student status (in first year of candidature?)
 - overseas student status.

Evaluate the case

Determine if the case [Rule 6.1]:

- has no merit;
- is, given the student's record and status, probably a case of Inadvertent Plagiarism; or
- is probably a case of Intentional Plagiarism.

Remember that a record of two or more previously recorded instances of Inadvertent Plagiarism requires the case to be escalated to one of Intentional Plagiarism [Rule 6.3]

Make your decision

- **No merit** – no further action required:
 - unless an allegation was made directly to you, in which case you should seek advice on whether/how to reply to the allegation (the student subject to the investigation may not be aware that an allegation has been made so there are privacy issues); or
 - if you were directed then a report should be given to your Head of School.
- **Merit** – either:
 - accept the case for investigation as Inadvertent Plagiarism; or
 - escalate it to the Head of School as Intentional Plagiarism.

Some Schools may have delegated someone to deal specifically with cases of plagiarism. If so, you should send a report and recommendations to that person for action. Otherwise, continue as below.

INADVERTENT PLAGIARISM [Rules 6, 9]

Contacting the student

Invite the student by email to respond to your concerns **STANDARD LETTER A1**.

- Avoid making any statements that tend to pre-judge the outcome ('serious complaint', 'grave matter'). Keep your tone throughout all contact neutral.
- **STANDARD LETTER A1** includes references to UNE Rules and Sources of Student Advice and Support. You are not required to provide these in your email.

Include a copy of your analysis.

Rule 9.4 states that the student be granted at least ten working days for a response. You may specify a longer period if circumstances warrant, but you may not specify a shorter period.

- You may receive requests on various grounds to defer the deadline for the student's defence to the allegation [Rule 9.4]. Where good grounds exist, a short delay may be appropriate but do not allow momentum to be lost in the process by overly long or repetitive delays. It is the student's responsibility to find time to respond, not for you to give way. Claims for extra time while legal opinion is sought or the student has 'referred the matter to his/her advocate' are unacceptable. By all means use a 'chase-up' email if there is no response close to your deadline.
- Any claims by the student to refer the matter to his/her solicitors, to an Ombudsman or any other statutory authority should be answered with the statement that referral is within the student's right but this does not halt the process—a student who absents him or herself from the University process will be assumed not to want to defend the allegation [Rule 9.6].

- Any liaison with another person assisting the student is entirely at your discretion. While a student may give consent for a parent or friend to contact you, you are not required to debate the case but you may be prepared discuss the processes involved. You should not discuss the specific case with any parent, friend, or other party who does not have the student's explicit consent to talk to you.
- Solicitors' letters, letters from parliamentary representatives etc, should be discussed with the Academic Secretary. If necessary, support will be given to you to respond to these letters to allow you to proceed with your investigation uninterrupted.

Evaluate the student's response

- Has the student conceded to an error?
- Has the student provided any mitigating circumstances?
- Has the student any previous history of similar cases?
- Has the student previously sought support and advice?
- Has the student suggested seeking support and advice?
- Is there any evidence of error or lack of advice in the Unit's guidance material (such as the Unit Guide/Handbook or the Referencing Guide)?

If you decide there is no case to answer then the student is provided with **STANDARD LETTER B2**.

Setting the penalty [Rule 6.2a]

The setting of the Penalty is at the Unit Coordinator's discretion based upon his/her evaluation of the student's response and the student's circumstances.

The aim of the Rules is to be supportive and advisory in the first instance so new students and those of non-English-speaking backgrounds may merit warnings and referrals rather than punitive sanctions.

It is also the aim of the entire process that the student should learn from his/her error while not gaining any undue advantage compared to peers who have complied with the Rules. Accordingly, cases involving repeat offenders and/or experienced students may deserve more stringent sanctions.

Partnership agreements [Rule 6.12]

Before any penalty is applied to a student in a partnership arrangement, consultation is to take place between UNE and Partner representatives to ensure that any penalties are equitably applied across the two institutions. For example, Joint Medical Program students must be reported to the Head of Rural Medicine before any penalty is applied. This is to ensure that any University of Newcastle students similarly involved receive equivalent penalties. This similarly applies to all partnership programs where UNE students may be concurrently enrolled.

Informing the student of the penalty

Provide the student with the Penalty Notice **STANDARD LETTER B1** by email.

Quote the deadline of ten working days (or longer if circumstances warrant, but not shorter) to submit an appeal [Rule 9.4] and state to whom it is to be sent (Head of School [Rule 8.1])

- Do not engage in further debate. All subsequent correspondence should be treated as part of an appeal and forwarded to the Head of School (or nominee).

Inform the Head of School of the outcome.

Forward all records directly to the Records Management Office for updating of the Central Plagiarism/Academic Misconduct File.

INTENTIONAL PLAGIARISM [Rules 6, 9]

A preliminary investigation and recommendation will have already been provided to the Head of School by the Unit Coordinator **STANDARD MINUTE C1**.

The Head of School and Unit Coordinator should consult, and a record of the consultation kept **STANDARD LETTER C2**.

The Head of School may decide to:

- accept the case for investigation as Intentional Plagiarism;
- refer the case back to the Unit Coordinator for handling as Inadvertent Plagiarism; or (in exceptional cases where the Unit Coordinator's investigation is severely flawed)
- decide that the case has no merit.

Contacting the Student

Invite the student by email to respond to your concerns **STANDARD LETTER A1**.

- Avoid making any statements that tend to pre-judge the outcome ('serious complaint', 'grave matter'). Keep your tone throughout all contact neutral.
- **STANDARD LETTER A1** includes references to UNE Rules and Sources of Student Advice and Support. You are not required to provide these in your email.

Include a copy of the Unit Coordinator's analysis.

Rule 9.4 states that the student be granted at least ten working days for a response. You may specify a longer period if circumstances warrant, but you may not specify a shorter period.

- You may receive requests on various grounds to defer the deadline for the student's defence to the allegation [Rule 9.4]. Where good grounds exist, a short delay may be appropriate but do not allow momentum to be lost in the process by overly long or repetitive delays. It is the student's responsibility to find time to respond, not for you to give way. Claims for extra time while legal opinion is sought or the student has 'referred the matter to his/her advocate' are unacceptable. By all means use a 'chase-up' email if there is no response close to your deadline.
- Any claims by the student to refer the matter to his/her solicitors, to an Ombudsman or any other statutory authority should be answered with the statement that referral is within the student's right but this does not halt the process—a student who absents him or herself from the University process will be assumed not to want to defend the allegation [Rule 9.6].
- Any liaison with another person assisting the student is entirely at your discretion. While a student may give consent for a parent or friend to contact you, you are not required to debate the case but you may be prepared discuss the processes involved. You should not discuss the specific case with any parent, friend, or other party who does not have the student's explicit consent to talk to you.
- Solicitors' letters, letters from parliamentary representatives etc, should be discussed with the Director, Student Administration and Services. If necessary, support will be given to you to respond to these letters to allow you to proceed with your investigation uninterrupted.

Evaluate the Student's Response

- Has the student conceded to an error?
- Has the student provided any mitigating circumstances?
- Has the student any previous history of similar cases?
- Has the student previously sought support and advice?
- Has the student suggested seeking support and advice?
- What is the extent of the plagiarised material (how extensive was the intention to deceive)?
- Was there any evidence of error or lack of advice in the Unit's guidance material (such as the Unit Guide/Handbook or the Referencing Guide)?

If you decide there is no case to answer then the student is provided with **STANDARD LETTER B2**.

Setting the Penalty [Rule 6.2b]

The setting of the Penalty is at the Head of School's discretion based upon his/her evaluation of the student's response and the student's circumstances.

- The penalty of 6.2b (i) (Reduction in the Unit Assessment Mark) is to be reported to the Unit Coordinator for action.
- The penalties of 6.2b (ii) (Reduction in the Unit Grade) and 6.2b (iii) (WFN) are to be reported to the Exams and Results Unit of the Student Centre for entry into the student's academic record.
- The penalty of 6.2b (iv) (Recommendation for Exclusion from a Course or Unit) is to be provided as report for the Pro Vice-Chancellor and Dean's ratification.
- The penalties of 6.2b (v) (Recommendation for Exclusion from the University) and 6.2b (vi) (Revocation of Award) are to be provided as a report for the recommendation of the Deputy Vice-Chancellor (Academic) or Pro Vice-Chancellor (Research) to the Vice-Chancellor for ratification (Exclusion) or referral to the Academic Board (Revocation) once the Appeal has been heard (or the period for receiving an Appeal has expired).
- Before any penalty is applied to a student in a partnership arrangement [Rule 6.12], consultation is to take place between UNE and Partner Representatives to ensure that any penalties are equitably applied across the two institutions. For example, Joint Medical Program students must be reported to the Head of Rural Medicine before any penalty is applied. This is to ensure that any University of Newcastle students similarly involved receive equivalent penalties. This similarly applies to all partnership programs where UNE students may be concurrently enrolled.

Informing the student of the Penalty

Provide the student with the Penalty Notice **STANDARD LETTER C1** by email (once ratification is awarded in cases of Exclusion)

Do not engage in further debate. All subsequent correspondence should be treated as an Appeal.

Inform the Unit Coordinator of the outcome and of any actions to be taken [keep a record of this with the file].

Records and Notifications

- All records must be forwarded to the Records Management Office for updating of the Central Plagiarism/Academic Misconduct File.
- In cases of Exclusion the following are to be notified:
 - the Director of Student Services and Administration for recording on the student's academic transcript; and
 - the Director of English Language and International Services for subsequent action on the student's visa.

Intentional Plagiarism by Graduates [Rule 6.2b (vi)]

The University has the authority to revoke an award where evidence subsequently arises that indicates that the graduate plagiarised work submitted for his/her award.

- It is expected that this authority will only be applied in the most serious cases (typically where Exclusion might be applied to a current student) and within a reasonable time period after graduation. The extent of 'reasonable time period' is not defined but can be judged on the merits of the case and how far it is possible to conduct a fair investigation given the lapse of time.
- The same Conduct of Investigations and Appeal procedures for students [Rule 9] applies to graduates although the timelines in Rule 9.4 should be extended considerably given that no record of the graduate's current location may be immediately available (which is also a factor for 'reasonable time period').
- It is recommended that you contact the Deputy Vice-Chancellor (Academic) or Pro Vice-Chancellor (Research) before proceeding under Rule 9.6 (Failure to respond) given the legal issues that can arise from revocation of an award that is part of statutory and/or professional registration.

APPEALS [Rule 8]

The Appeal Officer/Chair of the Student Conduct Appeals Committee reviews the original papers and decides either that:

- the original hearing had any aspect that would give rise to the need to re-hear the case in full; or
- the original hearing had no evident flaws and the process should be restricted to whether:
 - the processes were fair and in accordance with the Rules,
 - the evidence was appropriate to support the decision, and
 - the penalty was appropriate for the seriousness of the offence.
- In the case of the former, then the Appeal Officer/Chair may proceed to conduct the review as a full re-hearing. In the case of the latter, then the Appeal Officer/Chair should proceed to a restricted review of the original case.

Where an appeal is restricted to a review, students may attempt to turn it into a re-hearing. Appeal Officers/Chairs should avoid this.

- In either event, the decision whether to accept new evidence is for the Appeal Officer or the Chair of the Student Conduct Appeals Committee. Normally, new evidence should not be

accepted unless it can be demonstrated that it was not available at the original hearing. If new evidence is allowed it is more likely that the Appeal Officer/Chair will proceed to re-hear the case in full.

The advice on third-party representations, solicitors' letters and requests for deferment previously given in these Guidelines also applies to appeals

- If the decision is to uphold the appeal or vary the penalty due to maladministration, the Appeal Officer/Chair must provide confidential reasons for that decision to the Deputy Vice-Chancellor (Academic). This is to ensure that any errors in the earlier investigation are reported and amendments made in the rules and/or guidance information to avoid further occurrences.
- Appeals are a continuation of the same TRIM case file as the original investigation.
- Once the appeal has been heard, **STANDARD LETTER E1** is sent to the student, with copies to the relevant Head of School and Unit Coordinator.

In the event of a successful appeal, if you consider an apology is warranted, you can consult the NSW Ombudsman publications '[Fact Sheet: Apologies](#)' and '[Apologies: A Practical Guide](#)'. These are available at the [NSW Ombudsman's website](#).

- Decisions of the Student Conduct Appeals Committee must be communicated by the Chair to the Records Management Office.

Ratification of Major Penalty of Exclusion

Once the appeal process has been exhausted and a penalty of Exclusion has been resolved upon, the Chair must forward all the papers [**STANDARD MINUTE C3**] to the Vice-Chancellor for ratification of the Student Appeals Committee's decision. The decision of the Vice-Chancellor is then given to the Chair who may then inform the student of the final decision, and inform the Director of Student Administration and Services that the penalty may be processed.

Revocation of an Award

Revocation is a major penalty reserved for the recommendation of the Vice-Chancellor and the approval of the Council. The same process applies as to Exclusion although the Vice-Chancellor will, if the case for revocation is supported, refer the recommendation to the Academic Board for its recommendation to the Council.

Further correspondence after the Appeal

Further correspondence after the Appeal, from whatever source, should be referred to the Deputy Vice-Chancellor (Academic).

ACADEMIC MISCONDUCT AND BEHAVIOURAL MISCONDUCT

As Academic Misconduct and Behavioural Misconduct are both forms of misconduct, the Investigation and Penalty Guidelines are similar for both. The acronyms AM and BM used below stand for Academic Misconduct and Behavioural Misconduct respectively.

INVESTIGATIONS [AM Rule 9, BM Rule 8]

An Investigator may commence an investigation when:

- a direct complaint is made to them;
- a complaint is referred to them by another Investigator who is unable to investigate themselves;
- they become aware of an offence; or
- a more senior member of UNE directs them to.

An investigation will normally be within the Investigator's own organisational area/area of expertise (unless they believe they cannot be [and be seen as] impartial). However, this may not necessarily be the case with directed or referred Investigations.

Depending on the complexity and facts of the case, an investigation will generally involve both of the following:

- initial investigation (to gather evidence/assess whether the case should proceed); and
- a hearing (or other resolution of the case).

Initial Investigation

Commence record-keeping immediately

If any verbal allegations are made, in order to initiate an investigation they must then be transmitted to you formally in writing/email [AM Rule 9.20, BM Rule 8.1]. If you do accept any initial verbal or telephone statements, you should make contemporaneous notes and initial and date them. [See the proforma at the end of these Guidelines].

Gather evidence

This could involve conducting interviews with the parties involved/witnesses, checking documents (including electronic), and physical inspection of a location. [See the section on interviews below].

Assess the case in order to determine if the complaint:

- has merit;
- is serious enough to require invoking the disciplinary process;
- ought to be handled at your level (if major penalties might be necessary [AM Rules 6.2c vi to 6.2 xiv, BM Rule 5.1 (b)] then the case should be escalated to a senior manager).

Make your decision

- *No merit/not serious enough to invoke the disciplinary process*: refer the case back with your decision and recommendations for action (if any; this could include a recommendation for mediation).
- *Merit*: either accept the case for investigation and hearing, refer it to a higher level, or (exceptionally) defer the case until the results of a hearing in another jurisdiction are complete.

NB. If concurrent hearings of the matter are in progress (e.g., criminal), you **are** allowed to handle the matter while this is in process [AM Rule 9.2, BM Rule 8.3] and in general encouraged to do so. However, if you consider there are pressing reasons for deferral, be mindful that civil and criminal proceedings can take several months—you should seek advice from the UNE Legal Office before deciding.

Do not over-escalate the case. If necessary, seek advice but without giving more detail than is necessary so that the investigation is not compromised. **Be careful not to seek advice from a person who might later hear an appeal against your decision. See AM Rule 8 and BM Rule 7 for a list of those who may hear Appeals.**

Senior Officers' Delegation

Senior officers of UNE [AM Rules 3.12 and 7.3 and BM Rule 6.1 (e-f)] may delegate the gathering of evidence. The choice of delegate will be determined by the estimate of the delegate's experience and skills. In general, the requirements would not be expected of General Staff of HEO8 or below or a lecturer Level B or below.

Record Keeping

This is essential to the integrity of the process. TRIM is the mandatory repository of all records. Help with scanning of hard-copy can be provided through the Manager, Customer Services in the Student Centre. Advice on use of TRIM and file creation can be obtained from the Manager, Records Management Office.

Contact with the Student [AM Rule 9, BM Rule 8]

This process is laid out in AM Rule 9 and BM Rules 8.6-8.11.

Avoid making any statements that may be seen as pre-judging the outcome. Keep your tone throughout all contact entirely neutral [**STANDARD LETTER A2**].

Any claims by the student to refer the matter to his/her solicitors, to an Ombudsman or any other statutory authority should be answered with the statement that referral is within the student's right but this does not halt the process. A student who absents him or herself from the University process will be assumed not to want to defend the allegation [AM Rules 9.2 and 9.6, BM Rules 8.3 and 8.10].

Any liaison with another person assisting the student is entirely at your discretion. While a student may give consent for a parent or friend to contact you, you are not required to debate the case but you may be prepared discuss the processes involved including the ability of the student to make his or her own case with a person present (but not with right of speaking/acting as an advocate at the pre-appeal phase) [AM Rule 9.22 (d), BM Rule 8.6 (d)]. You should not discuss the matter with any parent, friend, or other party who does not have the student's written consent to contact you.

Solicitors' letters, letters from parliamentary representatives etc. should be discussed with the Director, Student Administration and Services. If necessary, support will be given to you to respond to these letters to allow you to proceed with your investigation uninterrupted.

You may receive requests on various grounds to defer the deadline for the student's defence to the allegation [AM Rule 9.23, BM Rule 8.7]. Where good grounds exist, a short delay may be appropriate

but do not allow momentum to be lost in the process by overly long or repetitive delays. It is the student's responsibility to find time to respond, not for you to give way. Claims for extra time while legal opinion is sought or the student has 'referred the matter to his/her advocate', are not acceptable.

International Students

Cases involving international students are conducted in exactly the same way as for any other student. However, there is an additional requirement to inform the Directorate of English Language and International Services of any decisions involving exclusion or expulsion from UNE.

INTERVIEWS AND HEARINGS [AM Rule 9, BM Rule 8]

Interviews

These are part of the investigative process when information is being collected. Interviews leading directly to a determination should be managed as a hearing.

Choose a location which is:

- quiet;
- non-threatening; and
- discreet.

You might consider using the interview rooms in the Student Centre. It is 'neutral territory' and allows privacy in discussion but all parties can be seen in the room. To book a room, contact the Manager, Customer Services in the Student Centre.

Notes must be kept throughout an interview and made available to the student concerned. [See the proforma at the end of these Guidelines].

Any attempt to abuse or intimidate should be recorded in your notes [this may constitute an additional offence under AM Rule 1.5 and BM Rule 4.13]. If the situation deteriorates, attempt to calm the student and if necessary warn the student that you will have to terminate the interview until later when he/she is ready to be constructive in providing information/defending him/herself. A short break of 10 minutes may be all that is required.

A suggested sequence (which may be varied according to circumstance) is:

- introduce yourself.
- explain the investigative process, your role in it, and the purpose of the interview.
- listen to the individual's story (be sympathetic but neutral; do not express opinions about the seriousness of the complaint or of guilt or innocence).
- ask clarifying questions as required.
- summarise the outline of events/key details and ask the interviewee to confirm you have them correctly.
- thank the interviewee for attendance and explain what will happen next.

Hearings

These are part of the formal determination process either by an Investigating/Appeal Officer or by the Student Conduct Appeals Committee.

The rules make clear that the process is not a trial in legal form and not subject to courtroom 'rules of evidence'. Your role is to decide whether the case is proven on the **balance of the probabilities** [AM Rule 9.1, BM Rule 8.2].

Do not engage in legal or quasi-legal debate about due process, rules of evidence, cross-examination etc. Seek advice from the UNE Legal Office at any time if you are concerned but do not let yourself be drawn into a court-type argument by a student wanting to test his/her legal advocacy skills. Chairs may need to explain this to Committee members before the hearing starts.

The aim of the hearing is to go through the case information; to ask questions on points that may be unclear; for the complainant/witnesses/student to state what they know; for the student to reply to the allegation or seek mitigation; and for a decision to be made on the balance of the probabilities. As noted, to meet the requirements of procedural fairness, decisions must:

- be reasonable;
- take into account relevant considerations; and
- disregard irrelevant factors.

Notes should be taken of the questions and answers for record keeping purposes, but a verbatim record is not required. [See the proforma at the end of these Guidelines].

Questions of the Witnesses

Questions may be posed by the student of the witnesses through the Investigating/Appeal Officer/Chair (as in parliamentary/committee style), who shall remain in control of the questioning process. This must be explained to the student before the hearing starts. Based upon the responses, follow-up questions may be asked but **under no circumstances should the student be allowed to cross-examine the witness** [AM Rules 9.22 (d) and (e), BM Rules 8.6 (e) and (f)].

The aim of a question and answer process is to obtain clarity on the facts, not to attempt to try a case to beyond reasonable doubt. If at any stage the situation becomes heated, the proceedings may be suspended for a few minutes.

The Investigating/Appeal Officer, Committee Chair or Committee members may ask any questions but should also avoid attempting to cross-examine either witnesses or the student.

DECIDING ON AN APPROPRIATE PENALTY [AM Rule 6, BM Rule 5]

You are required to impose a penalty that is commensurate with the seriousness of the offence. Note that if at the end of your hearing it becomes apparent that the appropriate penalty is beyond your authority then the matter should be referred to a higher authority. 'Seriousness' is determined by two main considerations:

- the **culpability** of the student; and
- the **harm** caused or risked being caused by the student.

Culpability

Culpability derives from the following:

- the **intention** to cause harm, with the highest culpability when an offence is planned. The worse the harm intended, the greater the seriousness.
- the **recklessness** as to whether harm is caused, that is, where the student appreciates at least some harm would be caused but proceeds giving no thought to the consequences even though the extent of the risk would be obvious to most people.

- the **knowledge** of the specific risks entailed by his/her actions even though he/she did not intend to cause the harm that resulted.
- the extent of **negligence**.

Culpability should be the first factor in determining the seriousness of a breach.

Harm

Types of harm are diverse. For example, individuals may suffer physical injury, sexual violation, financial loss, damage to health or psychological distress. Many of the examples below may be more appropriate to Behavioural Misconduct than Academic Misconduct, but sometimes these two different types of misconduct may shade into each other.

The nature of harm will depend on the personal characteristics and circumstances of the victim and your assessment of harm will be an effective and important way of taking into consideration the impact of a particular breach on the victim.

In some cases no actual harm may have resulted and you will be concerned with assessing the relative dangerousness of the student's conduct. You should consider the likelihood of harm occurring and the gravity of the harm that could have resulted.

Harm to the University Community

Some offences cause harm to the University community at large (instead of, or as well as, to an individual victim) and may include economic loss, harm to public image, or interference with teaching and learning.

Other types of harm

Other types of harm are more difficult to define or categorise but may also need to be taken into account. For example, violence to one person certainly causes significant harm to the victim but other people associated with the victim may also suffer psychological distress and/or financial loss.

Harm to the public good

Some conduct is prohibited purely by reference to public feeling or social mores. In addition, public concern about the damage caused by some behaviour, both to individuals and to society as a whole, can influence public perception of the harm caused, for example, by the supply of prohibited drugs.

Assessment of Culpability and Harm

The precise level of culpability will be determined by such factors as:

- motivation,
- whether the act was planned or spontaneous, and/or
- whether the student was in a position of trust (such as a college tutor)
- the level of harm caused
- other aggravating factors

Culpability is greater if the student targets a vulnerable victim.

Where serious harm results but was unintended and beyond the control of the student, culpability will be significantly influenced by the extent to which the harm could have been foreseen.

Aggravating Factors

If present in a breach, aggravating factors indicate:

- either a higher than usual level of culpability on the part of the offender, or

- a greater than usual degree of harm caused by the offence (or sometimes both).

The list below includes the most important aggravating factors but it is not intended to be comprehensive and the aggravating factors are not listed in any particular order of priority. On occasions, two or more of the factors listed will describe the same feature of the breach and care needs to be taken to avoid 'double counting'.

Factors indicating higher culpability:

- breach committed whilst on probation, exclusion or suspension for other breaches
- previous record of breaches
- failure to respond to previous allegations
- breach motivated by, or demonstrating, hostility to the victim based on his or her (or his or her presumed):
 - race or ethnic group
 - religion
 - sexual orientation
 - disability
 - membership of a minority group
- deliberate targeting of vulnerable victim(s)
- planning of a breach
- an intention to commit more serious harm than actually resulted from the breach
- operating in groups or gangs
- breaches of professional ethics and standards
- commission of the breach for financial gain (where this is not inherent in the breach itself)
- high level of profit from the breach
- an attempt to conceal or dispose of evidence
- failure to respond to warnings or concerns expressed by others about the student's behaviour
- commission of a breach while under the influence of alcohol or drugs
- use of a weapon to frighten or injure victim
- deliberate and gratuitous violence or damage to property, over and above what is needed to carry out the breach
- abuse of power
- abuse of a position of trust

Factors indicating a more than usually serious degree of harm:

- multiple victims
- an especially serious physical or psychological effect on the victim or others, even if unintended
- a sustained assault or repeated assaults on the same victim
- victim is particularly vulnerable
- location of the breach (for example, in an isolated place)

- breach is committed against staff of the University in the course of, or associated with, their duties, or persons providing a public service
- presence of others (e.g., relatives, especially children or partner of the victim)
- additional degradation of the victim (e.g., taking photographs of a victim as part of a hazing breach)
- in property breaches, high value (including sentimental value) of property to the victim, or substantial consequential loss (e.g., where the theft of equipment causes serious disruption to a victim's life or studies)

Mitigating factors

Some factors may indicate that a student's culpability is **unusually low**, or that the harm caused by a breach is less than usually serious. These include:

- a greater degree of provocation than normally expected
- mental illness or disability
- youth or age, where it affects the responsibility of the student
- the fact that the student played only a minor role

Reduction of penalty

You may reduce the severity of a penalty where a student makes a frank acknowledgement of a breach at the first reasonable opportunity. This allows for:

- a reduction in fines (but not in a restitution payment)
- a reduction in time in exclusion
- a reduction from expulsion to exclusion

Credit may also be given for ready co-operation and genuine expression of remorse, frank acknowledgement of the character of the breach, or willingness to engage in remedial action.

COMMUNICATING YOUR DECISION [AM Rule 9, BM Rule 8]

The results of a hearing should be communicated in writing to the student. Keep your final written statements simple so that they are completely clear **STANDARD LETTER D1**.

Do not engage in further debate with the student or anyone else at this point so that you do not compromise your own decision.

Complaints about your handling of the case can be referred to the UNE or NSW Ombudsman and do not hesitate to suggest this [AM Rule 9.33 (c), BM Rule 8.18 (c)].

Any arguments after your decision are now a matter for the Appeal Officer/Committee and you should suggest that the student now concentrates on the next stage. This provides a means of maintaining momentum. Do not let the appeal be stalled by reopening and re-debating old arguments [AM Rule 9.29, BM Rule 8.14].

APPEALS

The appeal process is invoked by the student in response to the original Investigating Officer's decision and penalty [AM Rule 9.28, BM Rule 8.13]

In the first instance, the Appeal Officer/Chair of the Student Conduct Appeals Committee should review the original papers and make a judgment whether [AM Rule 9.29, BM Rule 8.14]:

- the original hearing had any aspect that would give rise to the need to re-hear the case in full; or
- the evidence did not support the decision; or
- the penalty was inappropriate.

In the case of the first point, the Appeal Officer/Chair may proceed to conduct the review as a full re-hearing. In the case of the latter two, then the Appeal Officer/Chair should proceed to a restricted review of the original case. Where an appeal is restricted to a review, students may attempt to turn it into a re-hearing. Appeal Officers/Chairs should avoid this.

In either event, the decision whether to accept new evidence is for the Appeal Officer or the Chair of the Student Conduct Appeals Committee. Normally, new evidence should not be accepted unless it can be demonstrated that it was not available at the original hearing—if new evidence is allowed it is more likely that the Appeal Officer/Chair will proceed to re-hear the case in full [AM Rule 9.30, BM Rule 8.15].

The advice on third-party representations, solicitors' letters and requests for deferment also applies to appeals.

If the decision is to uphold the appeal or vary the penalty, the Appeal Officer/Chair must provide confidential reasons for that decision to the Deputy Vice-Chancellor (Academic). This is to ensure that any errors in the earlier investigation are reported and amendments made in the rules and/or guidance information to avoid further occurrences.

If the decision is made to uphold a major penalty, this should be discussed with the Director, Student Administration and Services as soon as possible to arrange for its implementation. There are statutory provisions that can limit actions on a student's enrolment and records and timing of the decision can be critical.

Appeals are a continuation of the same TRIM case file as the original investigation.

Once the appeal has been heard, a letter **STANDARD LETTER E1** is sent to the student [AM Rule 9.33, BM Rule 8.18]. Keep it simple so there is no room for further argument. Note that **STANDARD LETTER E1** supplies the core of the response, and will need to be adjusted according to circumstance. In the event of a successful appeal, if you consider an apology is warranted, you can consult the NSW Ombudsman publications 'Fact Sheet 1: Apologies' and 'Apologies: A Practical Guide'. These are available in pdf at the NSW Ombudsman's website, at the following URL:

<http://www.ombo.nsw.gov.au/guideorganisations/guidepubsecagencies.html>.

Decisions of the Student Conduct Appeals Committee must be communicated by the Chair to the Records Management Office [AM Rule 9.34, BM Rule 8.19].

Ratification of Major Penalties of Exclusion and Expulsion

Once the appeal process has been exhausted and a penalty of Exclusion or Expulsion has been resolved upon, the Chair must forward all the papers to the Vice-Chancellor for ratification of the Student Appeals Committee's decision. The decision of the Vice-Chancellor is then given to the Committee Chair who may then inform the student of the final decision, and inform the Director of Student Administration and Services that the penalty may be processed.

Revocation [STANDARD MINUTE C3]

Revocation is a major penalty reserved for the recommendation of the Vice-Chancellor and the approval of the Council. Investigating Officers/Chair, Student Conduct Appeals Committee may, if he/she feels appropriate, recommend to the Vice-Chancellor Revocation of an Award in addition to any

other major penalty. Alternatively, the Vice-Chancellor may decide to add to any penalty a recommendation of Revocation [AM Rule 7.4, BM Rule 6.3].

Further correspondence after the Appeal

Further correspondence after the Appeal, from whatever source, should be referred to the Deputy Vice-Chancellor (Academic).

CONFIDENTIAL - STUDENT CONDUCT

TELEPHONE/INTERVIEW/HEARING REPORT PROFORMA

Student's name: _____ ID No.: _____

Investigator's Name: _____ TRIM reference: _____

Date: _____ Time start: _____

Location: _____ Time end: _____

Present: _____

NARRATIVE

Note: the following are examples that will be incorporated into the Standard Letters once the proposed new rules are endorsed in a final form by the Academic Board

COMMUNICATING THE RESULT OF A HEARING—SAMPLE

I have investigated this case and all the evidence presented to support both the allegation and the evidence in your defence.

I have decided that there is sufficient evidence on the balance of probabilities to support the allegation that you breached Student Conduct Rule(s):

quote the rule(s)

After considering the seriousness of the offence, the circumstances surrounding it, and any mitigating factors, I have decided in this case to award the penalty:

that you be placed on probation for the remainder of this academic year

You have the right to seek appeal against my decision by writing to [quote the next level authorised to hear the appeal]. This appeal must be made within 10 working days of receipt of this notice of imposition of penalty. I suggest you read carefully the rules previously sent to you for the conduct of appeals.

COMMUNICATING THE RESULT OF AN UNSUCCESSFUL APPEAL—SAMPLE

I/The Appeals Committee has/have considered your appeal and determined that there is no evidence to suggest that the original decision was unjust, inappropriate, or unduly harsh. Accordingly, my/our decision is that you breached Student Conduct Rule(s):

quote the rule(s)

and that the penalty:

that you be placed on probation for the remainder of this academic year

is upheld.

Although you have the right to seek a review of the conduct (but not of the outcomes) of the original investigation and your appeal by the UNE Ombudsman or NSW Ombudsman, this letter completes the UNE appeal process. Arrangements have been put into place for the implementation of the penalty with immediate effect.

COMMUNICATING THE RESULT OF A SUCCESSFUL APPEAL—SAMPLES

1. Variation of Penalty

I/The Appeals Committee has/have considered your appeal and decided that there is evidence to suggest that the original penalty was disproportionate to the seriousness of the offence. Accordingly, my/our decision is that you breached Student Conduct Rule(s):

quote the rule(s)

and that the penalty be changed to:

a fine of three penalty points and a restitution payment of \$150.

Although you have the right to seek a review of the conduct (but not of the outcomes) of the original investigation and your appeal by the UNE Ombudsman or NSW Ombudsman, this letter completes the UNE appeal process. Arrangements have been put into place for the implementation of the penalty with immediate effect.

1. Reversing of Decision

I/The Appeals Committee has/have considered your appeal and decided that there is evidence to suggest that the original decision was incorrect. Accordingly, my/our decision is that you have not breached Student Conduct Rule(s):

quote the rule(s)

and therefore no penalty applies:

a fine of three penalty points and a restitution payment of \$150.

NB These samples provide the core of the letters, but will need modifying according to circumstance. For example, you may consider that a fuller introduction and/or conclusion are warranted under some circumstances. If you decide an apology is appropriate as a part of upholding an appeal, you may find the material at the NSW Ombudsman's site useful; the URL is:

<http://www.ombo.nsw.gov.au/guideorganisations/guidepubsecagencies.html>