

1994—No. 477

**TECHNICAL AND FURTHER EDUCATION COMMISSION
ACT 1990—REGULATION**

(Technical and Further Education Commission (Student Discipline)
Regulation 1994)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Technical and Further Education Commission Act 1990, has been pleased to make the Regulation set forth hereunder.

Virginia Chadwick
Minister for Education, Training and Youth Affairs.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Technical and Further Education Commission (Student Discipline) Regulation 1994.

Commencement

2. This Regulation commences on 2 September 1994.

Definitions

3. In this Regulation:

“**appeal**” means an appeal lodged under clause 14;

“**breach of discipline**” is defined in clause 4;

“**Designated Officer**” of an establishment means the person appointed under clause 5 as the Designated Officer for the establishment, and includes any person acting as the Designated Officer for the establishment;

“**establishment**” means a TAFE establishment as defined in the Act;

“**Executive Officer**” of an establishment means the member of staff in charge of the establishment (whether under the title of College Director or Campus Manager or otherwise), and includes any person acting as the person in charge of the establishment;

“**Institute**” means a group of establishments within a single administrative unit and, in relation to a particular establishment, means the Institute (if any) to which the establishment belongs;

“**Institute Council**” means the Council appointed by the Managing Director for an Institute, and includes any person authorised to exercise the functions of the Council;

“**Institute Director**” of an establishment that forms part of an Institute means the person holding office (or acting) as the Director of the Institute;

“**Managing Director**” has the same meaning as in the Act;

“member of staff” means a person employed by the TAFE Commission under Part 6 of the Act;

“**premises of the TAFE Commission**” means land and premises occupied by the TAFE Commission or of which the TAFE Commission has control and management under Part 7 of the Act, and includes a campus of an Institute;

“**Review Committee**” means a committee appointed under clause 16;

“**student**” means:

- (a) a person enrolled in a course or program conducted by the TAFE Commission; or
- (b) a person attending a TAFEPLUS course or program; or
- (c) an overseas student attending a course or program conducted by the TAFE Commission; or
- (d) a person attending a course or program conducted by the TAFE Commission for an external organisation on a fee for service basis;

“**testamur**” means a document (such as a diploma or certificate) that evidences a student’s attainment, competency or attendance;

“**the Act**” means the Technical and Further Education Commission Act 1990.

Meaning of “breach of discipline”

4. (1) In this Regulation, “**breach of discipline**” means:

- (a) conduct that impairs the reasonable freedom of other persons to pursue their studies, research or work in the TAFE Commission or on the premises of the TAFE Commission or to participate in the activities of, or associated with, the TAFE Commission; or
- (b) conduct that is prejudicial to the management of the TAFE Commission or any part of it.

(2) Without limiting subclause (1), a student commits a breach of discipline if the student does any of the following:

- (a) assaults or threatens to assault a person;
- (b) unlawfully removes, damages or uses any property of the TAFE Commission;
- (c) obstructs a member of staff in the performance of the member’s duties;
- (d) refuses to give satisfactory particulars of the student’s identity in response to a direction to do so by a member of staff;
- (e) wilfully disobeys or disregards an order or direction of a member of staff, including a direction regarding safety;
- (f) enters premises of the TAFE Commission, or fails to leave a part of premises of the TAFE Commission, contrary to a direction given by a member of staff,
- (g) commits or engages in any dishonest or unfair act in relation to an examination or other form of academic assessment;
- (h) discriminates against another student, or against a member of staff, on the grounds of the other student’s or staff member’s age, race, sex, homosexuality, marital status, physical or intellectual impairment or disability, or religion;
- (i) incites hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the grounds of the age, race, sex, homosexuality, marital status, physical or intellectual impairment or disability, or religion of the person or members of the group;
- (j) fails to pay any fee or charge owing to the TAFE Commission;
- (k) fails to return a book or material borrowed from a library of the TAFE Commission after at least 2 notices directing the student to return the book or material within a specified time have been served on the student;
fails to comply with a provision of this Regulation or with an order or direction given under such a provision.

(3) Conduct does not cease to be a breach of discipline merely because it takes place elsewhere than on the premises of the TAFE Commission.

(4) Without limiting this clause, a student is taken to have discriminated against, or incited hatred towards, serious contempt for, or severe ridicule of, a person or group of persons if the student is found guilty by a court of having done so under the Anti-Discrimination Act 1977.

Designated Officers

5. (1) Each establishment is to have a Designated Officer.

(2) A member of the staff of an establishment is to be appointed (by, or in accordance with the written directives of, the Managing Director) as the Designated Officer for the establishment.

Exercise of functions of TAFE Commission concerning discipline

6. The functions of the TAFE Commission under section 7 (1) (f) of the Act are to be exercised in accordance with this Regulation.

PART 2—BREACHES OF DISCIPLINE

Guidelines for reports and inquiries

7. (1) The Executive Officer of an establishment may issue guidelines for the establishment for:

- (a) the manner in which reports of alleged breaches of discipline are to be made; and
- (b) the manner in which inquiries into alleged breaches of discipline are to be conducted.

(2) The requirements of the guidelines must be complied with by each member of staff of the establishment concerned.

Report of, and exclusion from establishment for, alleged breach of discipline

8. (1) A member of staff of an establishment who believes that a student has committed a breach of discipline:

- (a) must, as soon as practicable, report the alleged breach to the Designated Officer; and
- (b) may exclude the student from attendance at the establishment for the remainder of the day on which the alleged breach occurred.

(2) The exclusion of a student from an establishment under this clause does not prevent the taking of further action under this Part against the student in respect of the same behaviour.

Procedure on receipt of report

9. On receiving a report concerning an alleged breach of discipline by a student, the Designated Officer:

- (a) must consider the report; and
- (b) may make such inquiries into the alleged breach of discipline as he or she considers appropriate.

Student may make submissions about alleged breach

10. (1) If the Designated Officer is satisfied on the basis of the report, and any inquiries made, that the student has a case to answer, the Designated Officer:

- (a) must cause notice to be served on the student concerned as to the breach of discipline that is alleged to have occurred; and
- (b) must allow the student to make submissions (written or oral) to the Designated Officer about the alleged breach.

(2) The notice must specify the date (not less than 3 days after the notice is served) by which the submissions must be made.

(3) No further action is to be taken on the report unless the notice is served on the student within 21 days after the date of the alleged breach of discipline.

Penalties that may be imposed

11. (1) If, after considering any submissions duly made by the student, the Designated Officer is satisfied that the student is guilty of the alleged breach of discipline, the Designated Officer may do any one or more of the following:

- (a) reprimand the student;
- (b) order the student to attend at a specified time and place for counselling;
- (c) order the student to pay, within a specified time, a fine not exceeding \$200;
- (d) order the student to pay compensation to the TAFE Commission (in an amount not exceeding \$300) for any damage to property of, or under the control and management of, the TAFE Commission;
- (e) order that, for a period not exceeding 12 months, the student attend classes or use specified facilities or equipment only in accordance with certain conditions;
- (f) order the exclusion (for up to 30 days) of the student from the whole or any part of the establishment;

- (g) order that the student be excluded from one or more specified examinations;
- (h) order that the issue of a testamur to the student be delayed until the student complies with any order given to the student under this clause.

(2) Alternatively, the Designated Officer may make any one or more of the following recommendations to the Institute Director:

- (a) a recommendation that one or more of the penalties specified in subclause (1) be imposed on the student;
- (b) a recommendation that the student be taken to have failed one or more specified examinations or other forms of assessment;
- (c) a recommendation that the student be excluded (for up to 12 months) from the whole or any part of the establishment, or of any other establishment within the Institute;
- (d) a recommendation that specified conditions or penalties (being either alternative or additional to those recommended under this subclause) be imposed on the student;
- (e) a recommendation that the student be expelled from the establishment, the Institute or all premises of the TAFE Commission.

(3) In the case of an establishment that does not form part of an Institute:

- (a) the recommendation is to be made to the Executive Officer; and
- (b) a Designated Officer who is also the Executive Officer for the establishment may impose the penalties referred to in subclause (2) (b)-(d) as if those penalties were listed in subclause (1).

Action on recommendations

12. (1) The person to whom a recommendation referred to in clause 11

(2) (a)-(d) is made:

- (a) may take the action recommended; or
- (b) may take any other action of a kind referred to in clause 11 (2) (a)-(d) that the person considers appropriate; or
- (c) may take no action on the recommendation.

(2) The person to whom a recommendation referred to in clause 11 (2) (e) is made:

- (a) may recommend to the Managing Director that the student be expelled; or

- (b) may take any other action of a kind referred to in clause 11 (2) (a)–(d) that the person considers appropriate; or
 - (c) may take no action on the recommendation.
- (3) If a recommendation referred to in clause 11 (2) (e) is made to the Managing Director, the Managing Director:
- (a) may take the action recommended; or
 - (b) may take any other action of a kind referred to in clause 11 (2) (a)–(d) that the Managing Director considers appropriate; or
 - (c) may take no action on the recommendation.
- (4) The person making the decision on a recommendation must notify the Designated Officer of the action taken and of the reasons for that action.

No penalty unless student notified within specified period

13. (1) A penalty imposed under this Part has no effect unless the Designated Officer causes a written notice to be served on the student concerned within 14 days after the date specified in the notice under clause 10.

- (2) A notice under this clause must include:
- (a) the Designated Officer's finding in relation to the breach of discipline; and
 - (b) details of any penalty imposed on the student; and
 - (c) a brief summary of the reasons for the finding and for the imposition of the penalty concerned; and
 - (d) a statement to the effect that the student has a right of appeal against the finding and the penalty and a brief summary of the appeal procedure.
- (3) A penalty imposed under this Part takes effect on the day following the day on which the notice is served on the student, except as provided by clause 15.

PART 3—APPEALS

Appeals

- 14. (1)** A student may lodge an appeal against either or both of the following:
- (a) a finding that the student is guilty of a breach of discipline;
 - (b) a penalty imposed on the student in respect of the breach.

(2) The appeal must be lodged within 14 days after the date on which the notice under clause 13 is served on the student.

(3) A student lodges an appeal by giving written notice of the appeal to the Executive Officer of the establishment concerned.

(4) The notice must be signed by the student and must specify:

- (a) the finding or penalty against which the appeal is lodged; and
- (b) the grounds of the appeal; and
- (c) the student's residential address.

(5) The notice may, if the student wishes, nominate a person for the purposes of clause 16 (2) (a) to sit on the Review Committee.

(6) Within 14 days after a student has lodged a notice of appeal, the Designated Officer must cause the student to be notified in writing of the place, date and time for the hearing of the appeal.

Effect of appeal

15. (1) The lodging of an appeal suspends any penalty:

- (a) against which the appeal is made; or
- (b) arising from the finding against which the appeal is made.

(2) The suspension takes effect:

- (a) except as provided by paragraph (b), when the appeal is lodged; or
- (b) in the case of the exclusion of a student from an examination or from the whole or part of an establishment, at the end of 14 days after the date on which the appeal is lodged.

(3) The suspension ceases to have effect if the appeal is withdrawn or determined.

Review Committee

16. (1) The TAFE Commission must convene a Review Committee to hear and determine an appeal.

(2) A Review Committee is to be constituted by 3 members.

(3) One of the members of the Review Committee is to be:

- (a) a member of staff of the establishment concerned nominated by the student in the notice of appeal; or
- (b) if no such nomination is made or if the nominated person refuses to sit on the Review Committee, a member of staff of the establishment concerned nominated by:

- (i) the Institute Director for the establishment; or

(ii) in the case of an establishment that does not form part of an Institute, the Executive Officer of the establishment.

(4) One of the members of the Review Committee is to be a person nominated by the senior body responsible for the operational management of the Institute for the establishment concerned or, if there is no such body, by the Designated Officer.

(5) One of the members of the Review Committee is to be a person nominated by the Institute Council for the establishment concerned or, if there is no such Council, by the Managing Director. This member is to preside at meetings of the Review Committee.

(6) None of the following persons is to be a member of a Review Committee:

- (a) the Designated Officer who made the finding in respect of which the appeal was lodged; or
- (b) a member of staff who was supervising or had charge of the student concerned when the alleged breach of discipline occurred; or
- (c) an Institute Director or Executive Officer to whom a recommendation was made under clause 11 (2) in relation to the appellant.

Procedure at appeal

17. (1) A Review Committee may determine:

- (a) the procedure to be followed by the Committee; and
- (b) the persons who may be present during proceedings before the Committee; and
- (c) the witnesses (if any) who may be called before the Committee.

(2) Neither of the following persons is entitled to call witnesses to appear at a determination of an appeal:

- (a) the student who is the appellant;
- (b) the Designated Officer who made the finding in respect of which the appeal was lodged.

(3) However, the student concerned and the Designated Officer may each nominate a person (not being a barrister or solicitor) to represent him or her before the Review Committee making the determination.

(4) A Review Committee must give the student concerned or the student's nominee (if any) and the Designated Officer or that Officer's nominee (if any) an opportunity to be heard.

(5) The student concerned or the student's nominee (if any) and the Designated Officer or that Officer's nominee (if any) have the right to be present before the Review Committee at any time when any other person is present before it.

(6) A Review Committee is not bound by the rules or practice as to evidence and may inform itself on any matter in such manner it considers appropriate.

(7) A record must be kept of the Review Committee's proceedings in such form as the Committee determines and a copy of the record must be furnished by the Review Committee to the student concerned at his or her request without charge.

(8) The Review Committee may determine an appeal even if there is no appearance before the Committee by or on behalf of a party to the appeal.

Determination by Review Committee

18. (1) A Review Committee may, in relation to an appeal:

- (a) uphold the appeal; or
- (b) dismiss the appeal; or
- (c) alter a penalty or condition imposed.

(2) The decision of a Review Committee is final.

(3) Written notice of the Review Committee's decision must be served on the student concerned as soon as is reasonably practicable.

Effects of certain determinations

19. (1) This clause applies to a student whose appeal is upheld, if the appeal was against an order excluding the student from:

- (a) an examination (if the examination concerned was held before the order was suspended but after the lodgment of the appeal); or
- (b) the whole or any part of an establishment (if an effect of the order was to prevent the student from sitting for an examination).

(2) The student must be permitted to sit for an alternative examination in the subject concerned as soon as is reasonably practicable after the determination of the appeal.

(3) For the purposes of this clause, an appeal against an order referred to in subclause (1) (b) is taken to have been upheld if a penalty imposed by the order is altered in such a way that the penalty (as altered) would not have prevented the student concerned from sitting for the examination.

PART 4—MISCELLANEOUS

Payments to students

20. (1) A Review Committee that upholds an appeal may order that the student concerned be compensated (in an amount not exceeding \$100) for expenses incurred in connection with the appeal.

(2) Compensation is to be paid by the TAFE Commission.

Recovery of fines and compensation from students

21. Any amount that a student is ordered to pay under this Regulation (whether by way of penalty or compensation) may be recovered by the TAFE Commission as a debt in a court of competent jurisdiction.

Service of notices

22. (1) Any notice required by this Regulation to be served on a student may be served:

- (a) by its being given to the student in person; or
- (b) by its being sent by prepaid post to the address shown on the student's record of enrolment (or, if no such record is held by the TAFE Commission, to the student's address last known to the TAFE Commission).

(2) A notice served as provided in subclause (1) (b) is taken to have been served on the second day after it was posted.

Part 8 of Technical and Further Education Regulation 1975 of no effect

23. Part 8 of the Technical and Further Education Regulation 1975, as continued in force by clause 7 of Schedule 4 to the Act, has no effect in relation to a breach of discipline alleged to have arisen after the commencement of this Regulation.

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EXPLANATORY NOTE

The object of this Regulation is to replace Part 8 (Student discipline and appeals) of the Technical and Further Education Regulation 1975 which was continued in effect with respect to students of a TAFE Commission establishment on the enactment of the Technical and Further Education Commission Act 1990.

The Regulation contains provisions dealing with breaches of discipline, inquiries concerning such breaches, penalties, appeals against findings that students are guilty of breaches of discipline or the imposition of penalties, or both, the constitution and procedure of Review Committees, the payment of compensation to students who are successful on appeal and the recovery of fines and compensation from students.

This Regulation is made under the Technical and Further Education Commission Act 1990, including section 7 (1) (f) and (2) (b), section 36 (the general regulation making power) and clause 7 of Schedule 4 (Savings, transitional and other provisions) to the Act.
