

## Fitness to Continue in Study Policy<sup>1</sup>

	<b>This policy is effective from</b>	<u>29 June 2022</u>	
<b>Approval body</b>	<u>Academic Council</u>	<b>Approval date</b>	<u>29 June 2022</u>
<b>Owner</b>	<u>Head of Academic Affairs</u>	<b>Next review date</b>	<u>June 2027</u>

### 1. Purpose

- 1.1. The College's expectations regarding student conduct and behaviour are articulated in the NCAD Student Code. However, in some circumstances, a concern may arise about a student's behaviour, capacity, welfare or wellbeing to the extent that their fitness to continue in study is a cause for concern. The concern may arise because faculty or staff or others consider that a student's health, behaviour or actions may constitute a risk to the learning, working or living experience of themselves or others. The College has a duty to ensure that a student is fit to continue in study while undertaking education and training.
- 1.2. In implementing this policy, staff will consider what support may be offered to students both from within the College and externally. Students will be provided with information on the range of supports available and encouraged to seek support.
- 1.3. This policy sets out how the College may respond to instances where a concern is raised regarding a student's fitness to continue in study and the type of action that may be taken to support the student and manage the matter.
- 1.4. The purpose of this policy is to provide guidance about, and to set out procedures for, identifying and supporting students about whom there are fitness to continue in study concerns; and for determining whether a student is fit to continue in study.
- 1.5. The objectives of this policy are to:
  - 1.5.1. Protect the student, staff, faculty, the College, and the public;
  - 1.5.2. Identify and support students whose behaviour, capacity, welfare or wellbeing are of concern to themselves or others, or whose behaviour or actions are impacting adversely on, or pose a risk to, the learning, working, or living experiences of themselves or others;
  - 1.5.3. Guide students who experience issues that may affect their fitness to continue in study;
  - 1.5.4. Provide a suitable framework for the effective, consistent and timely identification and management of Fitness to Continue in Study issues that may arise;

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<sup>1</sup> This policy and procedure is derived from the UCD Fitness to Continue in Study policy and also draws heavily on the Limerick Institute of Technology Fitness to Continue in Study policy.

<b>Doc version</b>	<b>Approval date</b>	<b>Modified by</b>	<b>Summary of modifications</b>	<b>Next review</b>
V1	29 June 2022J	N/A	N/A	1 June 2027

- 1.5.5. Treat concerns regarding student fitness to continue in study seriously and as quickly as possible.

## 2. Definitions

### 2.1. Fitness to Continue in Study

A fitness to continue in study concern arises where a student's health, behaviour, capacity or actions are impacting adversely on, or pose a risk to, the learning, working or living experiences of themselves or others. A student may be deemed not fit to continue in study where it is considered that:

- 2.1.1. the student's health, behaviour or actions pose a risk to their own health, safety and/or wellbeing and/or that of others;
- 2.1.2. the student's health, behaviour or actions is (or is at risk of) adversely affecting the working, learning or living experiences of others;
- 2.1.3. the student's health or behaviour is (or is at risk of) adversely affecting the day-to-day activities of the College or a placement provider;
- 2.1.4. the student's support needs fall outside the scope of the support and other services, which the College can reasonably be expected to provide.

Fitness to continue in study concerns can occur at any stage during a student's time at college.

The role of the policy is to establish a College-wide approach for dealing with such issues and facilitate programmes, departments and schools in providing students experiencing difficulties with the appropriate supports and opportunities to remedy any problems that they experience. It is important to note that fitness to study issues can arise and be satisfactorily dealt with during a student's programme of study and outcomes of formal fitness to study procedures reflect a judgement on a particular issue, at a particular moment in time, and are not necessarily intended to be a judgement about a student's fitness to study in the future.

In all matters relating to a student's fitness to continue in study, NCAD is mindful of its obligations under the Equal Status Act (2000) as amended. NCAD will ensure full confidentiality and transparency under the Freedom of Information Act. All documents and notes relating to individual cases of Fitness to Continue in Study will be retained in accordance with data protection legislation.

This Policy to support and determine a student's Fitness to Continue in Study is intended exclusively for circumstances **not** covered by other existing policies.

### 2.2. Level 1

Level 1 refers to the initial procedure for circumstances where there are emerging concerns or indication of difficulty. See section 5 for Level 1 procedure.

**2.3. Level 2**

Level 2 refers to the procedures for an early stage response and support at a local Departmental level. See section 6 for Level 2 procedures.

**2.4. Level 3**

Level 3 refers to the procedures for a response and support at a local School level. See section 7 for Level 3 procedures.

**2.5. Level 4**

Level 4 refers to the procedures for a response and support at College level. See section 8 for Level 4 procedures.

**2.6. Return to Study**

Return to study in the context of this policy refers to the return to the College of students who have been suspended or directed to take a leave of absence under a Fitness to Continue in Study Policy.

**3. Scope**

- 3.1. This policy applies to all students throughout their period of registration, and to former students seeking to return to study whose registration has previously been excluded or withdrawn under a Fitness to Continue in Study process.
- 3.2. This policy relates to situations where a student's behaviour, welfare and wellbeing is impacting on their capacity to study. If a student's eligibility or capacity to continue with their studies is being impacted by:
  - 3.2.1. unsatisfactory academic performance or progress, the College's Continuation and Readmission Policy should be considered by NCAD's Exam Board, as appropriate.
  - 3.2.2. their persistent failure to attend or engage with the programme at all, the College's Withdrawal Procedure should be considered by NCAD's Exam Board.
  - 3.2.3. their poor conduct, the Student Code and the Student Disciplinary Procedure should be considered.
- 3.3. At any stage of these procedures a case may be referred to be considered under an alternative College policy or procedure as appropriate. The Head of Academic Affairs shall decide which policy should have priority or be the most appropriate in the circumstances. The Head of Academic Affairs may suspend a policy or procedure, pending the outcome of another policy or procedure.
- 3.4. This policy is not intended to cover emergency situations, or critical incidents.

**4. Principles**

- 4.1. This policy should be interpreted in a manner that welcomes diversity, respects the dignity of all persons involved, promotes equal opportunities for students to develop their full potential, and ensures a positive student experience, and that ensures a fair,

clear, consistent and timely approach to dealing with Fitness to Continue in Study matters.

- 4.2. The processes under all levels of this policy will be undertaken in a transparent manner, and the student will normally be informed of the identity and capacity of any persons with whom the College consults, including third parties, such as health professionals.
- 4.3. Should a student be unable or unwilling to participate at any level of this policy or to attend a meeting, the College may nonetheless follow this policy where it is reasonable to do so. The College may deal with issues on the basis of written reports and/or statements in the absence of the student. In addition, the College may consider any request from a student to proceed with a meeting in their absence on the basis of written reports and/or a written statement from the student.
- 4.4. Where an issue arises in relation to a student who is known to have a disability, and where the disability is relevant to the issue, then in the first instance consideration shall be given to the level and types of support put in place for the student in conjunction with the NCAD Disability Office. In consultation with the student, reasonable accommodation suitable to the needs of the student will be made available where practicable for students with disabilities.
- 4.5. All matters raised under this policy will be handled sensitively, and confidentiality will be observed as far as possible.
- 4.6. A student may be accompanied at meetings provided for in this policy by a support person of their choice.
- 4.7. The standard of proof applied at every stage of this Policy is the balance of probabilities.

## 5. Level 1: Emerging Concerns or Indication of Difficulty

Concerns about the student should be noted by the concerned party/parties to the student's Head of Department. This level is mainly relevant where there are emerging concerns or indication of difficulty. As such, communication should be verbal and confidential. The Head of Department shall then assess the concerns and, depending on the circumstances of the difficulty, may initiate either a Level 2 (Green), Level 3 (Amber) or Level 4 (Red) response as may be deemed appropriate.

## 6. Level 2: Department-level Early Stage Response and Support

- 6.1. A Level 2 response requires the involvement of the student's Head of Department **and** the concerned party/parties or a nominee of the Head of Department.
- 6.2. A Level 2 response may be invoked under the following circumstances:
  - 6.2.1. Concerns persist despite the student having already engaged with internal supports  
  
OR
  - 6.2.2. Refusal/reluctance by the student to engage with support services as recommended by the concerned parties.

- 6.3. If the student's Head of Department deems it appropriate, they shall invoke Level 2 Procedures as follows:
  - 6.3.1. Raise a Note of Concern (see Appendix 1).
  - 6.3.2. Notify the student in writing of the nature of the concerns expressed.
  - 6.3.3. Offer to facilitate a face-to-face meeting to provide support or advice to the student from appropriate academic or non-academic staff members. Where relevant, this meeting may include discussion of the contents of any existing reports.
  - 6.3.4. Meet with the student to review progress, as per the plan outlined in the Note of Concern.
  - 6.3.5. Close the Note of Concern if no further action is deemed necessary following the meeting described under 6.3.3.

**OR**

  - 6.3.6. Escalate the Fitness to Continue in Study proceedings to Level 3 (Amber) or Level 4 (Red).
  - 6.3.7. **The student should be formally notified of all outcomes.**

## **7. Level 3: School-level Response and Support**

- 7.1. A Level 3 response requires the involvement of the student's Head of School, Head of Department **and** the concerned party/parties or a nominee of the Head of Department/School.
- 7.2. A Level 3 response should be invoked under the following circumstances:
  - 7.2.1. There are persisting concerns despite the student having progressed through the Level 2 response,

**OR**

  - 7.2.2. There are first concerns (as opposed to emerging concerns) that are of such significance as to escalate immediately to a formal multi-disciplinary case review.
- 7.3. The student's Head of Department and Head of School will consult and invoke Level of 2 of these proceedings as follows:
  - 7.3.1. Raise an initial Note of Concern (see Appendix 1) or reopen the Note of Concern from Level 2.
  - 7.3.2. Notify the student and the concerned party/parties in writing of the nature of concerns expressed.
  - 7.3.3. Arrange a multi-disciplinary case review meeting.
- 7.4. **Purpose of the multi-disciplinary case review meeting:**
  - 7.4.1. To consider the concerns noted;

- 7.4.2. To obtain the views of relevant parties, including the student;
- 7.4.3. To formulate an agreed support plan;
- 7.4.4. To support a student who wishes to withdraw voluntarily or to take a leave of absence on fitness to continue in study or compassionate grounds;
- 7.4.5. To provide information to allow the Head of School and Head of Department to determine if escalation to a Level 4 (Red) response is required.

**7.5. Composition of multi-disciplinary case review panel:**

- 7.5.1. Head of School **and** Head of Department;
- 7.5.2. The student;
- 7.5.3. One attendee nominated by the student (optional);
- 7.5.4. The concerned party/parties;
- 7.5.5. Any other internal or external personnel, including medical professionals, whom the Head of School should deem relevant.

**7.6. Progress review meeting:**

- 7.6.1. The Head of School will set a review meeting within an appropriate time interval. The effectiveness of the agreed action plan should be evaluated, with all members of the multi-disciplinary case review panel present.
- 7.6.2. The outcome of this review meeting can be as follows:
  - a. Close the Note of Concern if no further actions are deemed necessary following the review meeting;  
**OR**
  - b. Continue the agreed support plan for the student, with or without modification, for a further specified period;  
**OR**
  - c. Arrange for the student if she/he/they wish to voluntarily withdraw/defer/take leave of absence under Fitness to Continue in Study;  
**OR**
  - d. Escalate proceedings to a Level 4 (Red) response due to enduring concerns for the student despite completion and follow-up of a multi-disciplinary case review. A Level 4 (Red) response might also be invoked following a Level 2 (Amber) response if the student has refused to engage with supports or if circumstances have changed.
- 7.6.3. **The student should be formally notified of all outcomes.**

## 8. Level 4: College-level Response and Support

- 8.1. A Level 4 response requires the involvement of the student's Head of School, Head of Department *and* the Head of Academic Affairs. In an urgent situation, the Head of School, Head of Department and Head of Academic Affairs may nominate a representative. The concerned party/parties may also be included, where appropriate.
- 8.2. The Level 4 response is intended for exceptional circumstances where there are concerns that require urgent consideration and determination of the student's fitness to continue in study. It may be invoked immediately following a Green or Amber Response, or it may be invoked directly with no preceding levels due to the seriousness of the concerns.
- 8.3. The Head of School and Head of Department must initiate the Level 4 (Red) response by consulting with the Head of Academic Affairs, raising an initial Note of Concern (see Appendix 1) or reopening a Note of Concern from a preceding level of response.
- 8.4. The Head of Academic Affairs shall decide if Level 4 procedures should be invoked:
  - 8.4.1. The Head of Academic Affairs may seek further information or professional advice before considering any further action. This may include medical and/or psychological assessment, which shall not be at the expense of the student. The assessment shall be undertaken by an appropriately qualified person nominated by the Head of Academic Affairs and currently working in the area, without a conflict of interest, and unrelated to and independent of the student.
  - 8.4.2. If the Head of Academic Affairs decides a case review should take place, and on receipt of full documentation relevant to the case, the Head of Academic Affairs convenes a Fitness to Continue in Study Programmes Board Subcommittee (hereafter the Subcommittee), which acts with full delegated authority of the NCAD Programmes Board. It conducts a formal review to consider reported Fitness to Continue concerns and the response and support provided at preceding levels of response.
  - 8.4.3. The student shall be informed in writing that the Level 4 procedure has been initiated and that the Subcommittee has been convened. The student should be invited to and given a minimum of ten working days' notice of the date of the meeting. The student may choose to waive the notice period if the Subcommittee can convene a meeting in advance of the notice period.
  - 8.4.4. The student will be asked to confirm their availability to attend the meeting. Where the student does not attend a committee may choose to proceed in their absence. Where a student intends to be accompanied to the meeting by a support person of their choice, they should provide the Subcommittee with the name and capacity of the accompanying person in advance of the meeting.
  - 8.4.5. A copy of any relevant documentation that has been supplied in respect of the case will be provided to the student in advance of the meeting. The student shall be invited to make their own written submission in advance of the meeting.

**8.5. Composition of the Fitness to Continue in Study Subcommittee**

- 8.5.1. The Subcommittee shall comprise three voting members: a Chairperson, who will be the Head of Academic Affairs or a nominee, a Head of Department from the student's School (not previously involved in managing the case), a Head of School with no relationship to the student or the case. Gender-balance is an important consideration in the composition the Subcommittee.
- 8.5.2. A member of staff may be appointed as a non-voting secretary of the Subcommittee.
- 8.5.3. The Subcommittee may co-opt additional members to provide required expertise or specific representation and advice to the Subcommittee. The co-option of members will be on a case by-case basis and requires the agreement of the Head of Academic Affairs. Co-opted members will act in a strictly advisory capacity and shall be non-voting.
- 8.5.4. The Subcommittee for the case review should be kept as small as possible.

**8.6. Procedures of the Subcommittee meeting:**

- 8.6.1. The Subcommittee may seek attendance of other relevant parties to provide verbal evidence and accounts of incidents or behaviour that have called into question the student's fitness to continue in study.
- 8.6.2. At the meeting, the Chair should outline the procedures of the meeting setting out the different outcomes available to the Subcommittee.
- 8.6.3. The Subcommittee shall determine whether the student is fit to continue in study. Please see section 2.1 for criteria.
- 8.6.4. Members of the Subcommittee may ask the student questions relating to the concerns over their fitness to continue in study.
- 8.6.5. The student should be given the opportunity to respond to any concerns raised and may make any relevant contribution to the meeting.
- 8.6.6. Decisions of the Subcommittee shall be agreed by a simple majority and the student will be informed of the timeframe within which they will be notified of the outcome of the process.
- 8.6.7. A record of the proceedings shall be made.

**8.7. Outcomes of the Subcommittee review**

- 8.7.1. When all of the documentation and oral evidence has been considered, the Subcommittee may apply one or more of the following outcomes:
  - a. Direct that the case be dismissed with no further action and the student is recommended to continue in study;
  - b. Direct that the student be allowed to continue, subject to review under certain specified conditions, such as careful mentoring by an experienced member of academic staff.



- c. Direct that a student who has failed to comply with any requirement to be assessed by an appropriately qualified person be suspended, without prejudice, until they are certified as fit to study by the person recommended by the College in section 8.4.1, without a conflict of interest and unrelated to and independent of the student;
  - d. Direct that the student be suspended for a specified period;
  - e. Direct that the student be required to undertake a second attempt for certain elements of the programme of study without academic penalty;
  - f. Direct that the student be required to complete specific actions in a specified and reasonable time frame to demonstrate their fitness to continue in study (e.g. undertake an action plan to resolve a specific concern);
  - g. Direct that the student take Time Out from studies for an agreed period to concentrate on their wellbeing and/or to resolve any specific concern, subject to review at the end of that period, and demonstration, to the satisfaction of the Head of Academic Affairs, that they are fit to return to study (Section 11);
  - h. Recommend that the student avail of an exit award, if one is available, in consultation with the relevant governing board(s) and subject to compliance with the College's transfer regulations and policy;
  - i. Direct that the student's registration be terminated and/or that the student be permanently excluded from the programme.
- 8.7.2. The Subcommittee shall write a report on the meeting including their decision(s) and the rationale for their decision(s).
- 8.7.3. The Chair shall notify the student and Academic Council of the outcome of the meeting, in writing no later than five working days after the Subcommittee meeting.
- 8.7.4. The Chair shall inform the student of their right to appeal the decision(s), the procedure for lodging an appeal and the time limit for lodging an appeal (ten working days from notification of the decision).
- 8.7.5. The Chair shall communicate the outcome of the Subcommittee meeting at the next meeting of the NCAD Programmes Board.

## 9. High Risk Cases

- 9.1. In appropriate circumstances, including where a student fails to comply with the Fitness to Continue in Study policy or process, the matter may be referred by the Head of Academic Affairs, seeking a temporary suspension pending a full hearing in accordance with a Fitness to Continue in Study review.
- 9.2. Where the Registrar determines that a student's health, behaviour or actions pose a significant and/or immediate risk to their own health, safety or wellbeing, or that of

others, the Registrar, without prejudice, may impose a temporary suspension of the student from the College.

## 10. Appeals

- 10.1. An appeal may be made to the Academic Council Student Appeals Committee within 10 working days from the date of issue of the decision of the Subcommittee. Details of the appeal procedure can be found below, under Section 12.
- 10.2. Appeals may be made on the following grounds:
  - 10.2.1. New evidence: Information directly relevant to the decision, which for good reason was not available to the Subcommittee;
  - 10.2.2. Procedural irregularity: There is evidence that the procedures relating to a decision were not followed properly, which may have impacted on the Fitness to Continue in Study Subcommittee's decision;
  - 10.2.3. Disproportionate outcome: The outcome applied was disproportionately severe with regard to the circumstances of the case.
- 10.3. Decisions of the Student Appeals Committee. The Committee may:
  - 10.3.1. Uphold the Appeal;
  - 10.3.2. Reject the Appeal.
- 10.4. On upholding an appeal, a Student Appeal Committee may require the student making the appeal to meet specified conditions.

## 11. Return to Study

- 11.1. The College is committed to assisting students to return to study where a return to study is appropriate. Students wishing to return to study following a period of suspension or where they were directed to take a Time Out must satisfy the Head of Academic Affairs, in accordance with this policy, that they are fit to study and that they have complied with any conditions attached to their return.
- 11.2. A request to return to study must be made in writing by the applicant to the Head of Academic Affairs.
- 11.3. The Head of Academic Affairs will normally require:
  - 11.3.1. the student to provide evidence to demonstrate that the reasons why they were suspended or directed to take a leave of absence have been satisfactorily addressed; and / or
  - 11.3.2. that they are certified by an appropriately qualified person to be fit to continue with their studies. The assessment shall be undertaken by an appropriately qualified person nominated by the College and currently working in the area, without a conflict of interest, and unrelated to and independent of the student.

- 11.4. For the purposes of this section of the policy, an applicant is considered physically and/or mentally fit to return to study if they:
- 11.4.1. have the physical and / or mental capacity to return and continue with their programme of study; and to participate in study to the standard required by the College; and
  - 11.4.2. do not constitute a risk to the health or safety of themselves or others, or of adversely affecting the working, learning, or living experiences of others.
- 11.5. If considered not fit to return to the programme, the student should be given a final opportunity to avail of an exit award, if one is available, or to voluntarily withdraw in consultation with the Head of Academic Affairs and subject to compliance with the College's regulations and policies. If the student does not avail of either option, the Academic Council may terminate the student's registration.
- 11.6. The Head of Academic Affairs should inform the applicant in writing of their decision, copying the Chair of Academic Council and Student Records.
- 11.7. Where a student's registration was terminated or where they have been excluded from a programme they are not eligible to return to the programme. Any subsequent applications to other programmes will be flagged and considered by the Head of Academic Affairs in consultation with the Head of School and Head of Department of the programme to which the student is applying.

## 12. Academic Council Student Appeals Committee

### Membership

- 12.1. A Student Appeals Committee will be convened from the membership of the Academic Council. The Committee shall be composed of a Chair, who will be the Head of Corporate Services/Registrar, and two further members. Each Student Appeals Committee should ensure gender balance.

### Procedures

- 12.2. The Student Appeals Committee will conduct its business in accordance with the principles of natural justice. Members of Academic Council will not be asked to serve on committees involving students from their school or programmes upon which they teach. No member of the original Fitness to Continue in Study Subcommittee or person providing administrative support to that committee may serve on or support the appeal committee. Committee members must recuse themselves if they become aware of any potential conflict.
- 12.3. The original Fitness to Continue in Study Subcommittee will receive a copy of the appeal form and any other supporting evidence for comment. Both the student making the appeal and the Student Appeals Committee will receive a copy of the appeal, any other supporting evidence, the evidence submitted by the original Fitness to Continue in Study Subcommittee, and their comment in relation to the appeal in advance of the meeting. The Student Appeals Committee may request additional information if

necessary. Where the student making an appeal is invited to attend the Student Appeals Committee meeting, they:

- 12.3.1. will be given 10 working days' notice of the date of the meeting. Students making an appeal may choose to waive this notice period if an earlier meeting can be facilitated by the Student Appeals Committee;
  - 12.3.2. may be accompanied by a person of their choice to support them at the meeting, such as a Student Adviser, an SU Officer or a relative. A support person will not normally be a legal representative and it will be at the College's discretion whether a legal representative shall be permitted to attend;
  - 12.3.3. will be provided with copies of all documents supplied to the Student Appeals Committee within FIVE working days of the date of the committee meeting.
- 12.4. Decisions will be made on the balance of probabilities, by a simple majority.
- 12.5. A note-taker will be in attendance and a record of the meeting and related outcomes will be kept.

### **Decisions**

- 12.6. The Student Appeals Committee may decide (as noted in Section 10) to:
- 12.6.1. Uphold the appeal
  - 12.6.2. Not uphold the appeal.
- 12.7. On upholding an appeal, a Student Appeals Committee may require the student making the appeal to meet specified conditions.
- 12.8. The decision of the Student Appeals Committee is final and will be communicated to the student making the appeal and the original Fitness to Continue in Study Subcommittee within FIVE working days of the committee meeting.
- 12.9. If the student making the appeal is dissatisfied with the College's handling of an appeal or decision in relation to an appeal, they may submit a complaint to the Office of the Ombudsman. The Office of the Ombudsman may consider the case and make a decision on whether to investigate.
- 12.10. Information about the Office of the Ombudsman and education services is available at: <https://www.ombudsman.ie/publications/information-leaflets/the-ombudsman-andeducati/index.xml>.

## **13. Related documents**

- 13.1. Appendix 1: Note of Concern
- 13.2. Student Appeal Committee Appeal Submission Form

## **14. Version history**

This is the first published version of the Fitness to Continue in Study Policy.