



POLICY TITLE: DEFAULT POLICY (INTERNATIONAL STUDENTS)

DEVELOPED / REVIEWED BY

Policy Committee
Director of Business Services and Advancement
Head of Admissions
Risk and Compliance Manager
Human Resources Manager

REVIEW SUMMARY

Policy to be presented to the Policy Committee for the first time at the May 2024 meeting. Policy to be reviewed in the first twelve months to ensure accuracy to current legislative components.

DOCUMENT DEVELOPMENT PROCESS

This document was first developed by Director of Business Services and Advancement and the Head of Admissions in 2024.

RATIONALE

Part 5, Division 2 of the Education Services for Overseas Students (ESOS) Act (2000) sets out the circumstances of a default by a registered provider or an international student which can lead to an international student receiving a refund of tuition or non-tuition fees.

Standard 3.4.2 of the National Code of Practice for Providers of Education and Training for International Students (2018) (National Code) requires the College to have processes in place for claiming a refund of tuition or non-tuition fees.

This Policy explains the meaning of default under the ESOS Act and the obligations that the College has in the event that a default occurs.

DEFINITIONS

ESOS Act	Education Services for Overseas Students (ESOS) Act (2000)
National Code	National Code of Practice for Providers of Education and Training for Overseas Students (2018)
Provider Obligation Period	Period within which the College must discharge its obligations (within 14 days after the default day).
Registered Provider Default	The College, as a registered provider, is bound by the default requirements under section 46A of the ESOS Act.



	<p>Under section 46A, the College defaults, if</p> <ul style="list-style-type: none"> • either of the following occurs: <ul style="list-style-type: none"> ○ the College fails to start to provide the course to the student at the location on the agreed starting day; or ○ the course ceases to be provided to the student at the location at any time after it starts but before it is completed; and • the student has not withdrawn before the default day. <p>The College will also default if a sanction is imposed on it under the ESOS Act which prevents it from providing a course.</p> <p>Exceptions to College default circumstances exist, including where the student defaults.</p>
Student Default	<p>Under section 47A of the ESOS Act a student defaults if:</p> <ul style="list-style-type: none"> • the course starts on the agreed starting day, but the student does not start the course on that day (and has not previously withdrawn); or • the student withdraws from the course (either before or after the agreed starting day); or • the College refuses to provide, or continue providing, the course to the student because of one or more of the following events: <ul style="list-style-type: none"> ○ the student failed to pay an amount they were liable to pay the College, directly or indirectly, in order to undertake the course ○ the student breached a condition of their visa ○ misbehaviour by the student. <p>A student won't be classified as defaulting if the reason why a student does not start a course on the start day is because the College fails to provide the course to the student on the agreed starting day (Registered Provider Default)</p>
TPS	<p>The Tuition Protection Service (TPS) is an Australian Government initiative which supports international students on student visas and eligible domestic students whose education providers are unable to fully deliver their course of study.</p>

PRINCIPLES / GUIDING PRINCIPLES

It is the College's policy to ensure that in the event of either a default by the College, as a registered provider, or the student, we will follow all the notification and refund processes and procedures prescribed by the ESOS Act.

PROCEDURES

College Obligations if the College Defaults

Section 46D of the ESOS Act sets out the College's obligations to an international student or intending international student if the College defaults on the provision of a course.

The College will discharge its obligations to the student if both of the following apply:

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The College arranges for the student to be offered a place in an alternative course at the College's expense; and

- the student accepts the offer in writing; or
- the College provides a refund (refer to our **International Student Refund Policy**).

Provider Obligation Period

The College must discharge its obligations to the student within 14 days after the default day (**Provider Obligation Period**).

It is an offence under the ESOS Act for the College to fail to comply with its obligations under section 46D.

Student Default

A student won't be classified as defaulting if the reason why a student does not start a course on the start day is because the College fails to provide the course to the student on the agreed starting day (**Registered Provider Default**)

The College may also decide to not report a student default if it believes there are compassionate or compelling circumstances and the delayed start will have no impact on the student's course end date.

Refer to **International Student Deferring, Suspending or Cancelling an Enrolment Policy** for further details on compassionate and compelling circumstances and evidence requirements.

In relation to student misbehaviour, a student won't be considered to have defaulted unless the College accords them natural justice before refusing to provide, or continue providing, the course to the student.

Notification of College Default

Under section 46B of the ESOS Act the College must provide written notice to the Commonwealth Department of Education and the Director of the TPS of a default by the College within three business days of the default occurring.

The notice must include the following:

- the circumstances of the default
- the details of the students in relation to whom the College has defaulted
- advice as to:
 - whether the College intends to discharge its obligations to those students under section 46D; and
 - if appropriate, how the College intends to discharge those refund obligations.

The College also needs to give written notice of the default to the students affected by the default

Notification of Discharge of Obligations

Under section 46F of the ESOS Act the College must provide notice to the Commonwealth Department of Education and the Director of the TPS within seven days after the end of the **Provider Obligation Period**.

The notice must include the following:

- whether the College discharged its obligations towards the student under section 46D

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- if the College arranged alternative courses:
 - details of the students the College provided arranged alternative obligations for; and
 - details of the courses arranged; and
 - evidence of each student's acceptance of an offer for a place in an alternative course;
- if the College provided refunds:
 - details of the students the College provided refunds to; and
 - details of the amounts of the refunds provided.

Refunds

For more information, refer to our **International Student Refund Policy**.

Record Keeping

The College maintains evidence of compliance with this policy by maintaining records of default notifications received by the College and any decisions made in relation to such notifications. Records will be maintained in accordance with our **International Student Records Management and Retention Policy**

RESPONSIBILITY

- Principal
- Director of Business Services and Advancement
- Head of Finance and Services

RELATED LEGISLATION

- Education Services for Overseas Students Act (2000) (Cth)
- National Code of Practice for Providers of Education and Training to Overseas Students 2018
- Education Services for Overseas Students Regulations 2001 (Cth)
- Migration Act 1958 (Cth)

RELATED SIENA COLLEGE POLICIES

- International Student Refund Policy
- International Student Deferring, Suspending or Cancelling an Enrolment Policy
- International Student Records Management and Retention Policy



RISK

In the Committee's deliberations it is important to consider the College's main strategic processes and the identification of associated risks. Some sample questions are included for referral.

Answers are to be documented as part of the policy.

1. **Faith and Catholic Identity.** Identify any risks to Catholic Identity or Dominican charism of the school. How will this policy harm or enhance either?
2. **Reputation.** Identify if there are any reputational risks to the College. How will this policy impact Siena and wider communities?
3. **Financial.** Identify any financial risks to the College. How will this policy impact the financial stability of the College?
4. **Contemporary Learning and Teaching.** Identify any risks to learning and teaching. How will this policy impact the academic performance of the College?
5. **Wellbeing.** Identify any risks to safety and wellbeing. How will this policy impact the mental and physical wellbeing of the College community?
6. **Community Engagement.** Identify any risks to building community engagement. How will this policy impact community relationships?
7. **Governance and Leadership.** Identify any risks to governance and leadership in the College. How will this policy affect the strategic direction of the College?

Do any risks identified above warrant changes to the proposed policy? If so the policy should be referred back to the developer/s.

NEXT REVIEW

May 2025

POLICY LOCATION

<https://sienacentral.siena.vic.edu.au/homepage/3452>
www.siena.vic.edu.au