

DISCRIMINATION, HARASSMENT AND BULLYING POLICY AND PROCEDURE

PURPOSE

This policy is designed to ensure the Central Coast Community College's (the College's) workplace and learning environments remain free from discrimination, harassment, bullying and workplace violence.

APPLICATION

This Policy applies to the Board, staff members and students, collectively referred to as workplace participants. This policy does not form part of your contract and may be varied at any time by the business.

The College is committed to the principles of access and equity and to providing a harmonious work and learning environment for our staff and our students. We recognise that our staff and students have a legal right to a safe and non-intimidating work and study environment and we accept our legal and moral obligation to ensure that no one at the College subjects them to harassment, bullying or workplace violence.

This policy is not limited to the workplace or work hours. This policy extends to all functions and places that are work related e.g. work lunches, conferences, Christmas parties, client and other stakeholder functions.

DEFINITIONS

Board means the elected body that governs the affairs of the College

Director means a person elected by the College's members to the Board

Manager a person who directly manages or oversees the activities and performance of staff or volunteers

Student means any person for whom the College provides an educational experience

Staff members mean employees of the College whether they be permanent, fixed term or casual employees, contractors or volunteers

Training staff means trainers, instructors, tutors, support workers who facilitate an educational experience

PROCEDURES

Discrimination

Direct discrimination in employment occurs when a person is treated less favourably than another in their employment because of a reason or ground which is prohibited by law. The prohibited grounds of discrimination are set out in the Federal, State and Territory anti-discrimination laws and include sex, race, age etc.

A full list of the grounds of discrimination which operate federally and in the State and/or Territories in which workplace participants undertake their work for the Business will be relevant and are listed below:

- Race (including colour, nationality, descent, ethnic, ethno-religious or national origin)
- Religious belief, affiliation, conviction or activity
- Sex
- Marital status, domestic status, relationship status
- Pregnancy (including potential pregnancy)
- Homosexuality, transsexuality, sexuality, sexual preference/orientation, lawful sexual activity, gender identity
- Carers' responsibilities, family responsibilities, carer or parental status, being childless
- Disability/impairment, including physical, mental and intellectual disability
- Breastfeeding
- Age (including compulsory retirement)
- Industrial/trade union membership, non-membership or activity
- Political belief, opinion, affiliation, conviction or activity
- Employer association membership, non-membership or activity
- HIV/AIDS
- Defence service
- Association i.e. association with a person who has one or more of the attributes for which discrimination is prohibited

Harassment

- Harassment is unwelcome conduct directed towards a person based on the grounds of discrimination that a reasonable person would expect to offend, humiliate or intimidate.
- Sexual harassment is unwelcome conduct of a sexual nature, which makes a person feel offended, humiliated or intimidated. Conduct can amount to sexual harassment even if the person did not intend to offend, humiliate or intimidate the other person. However, conduct will not be sexual harassment if a reasonable person, having regard to all the circumstances, would not have anticipated that the conduct would offend, humiliate or intimidate the other person.
- Sexual harassment does not have to be directed at a particular individual to be unlawful. Behaviour which creates a hostile working environment for other workplace participants can also be unlawful. Examples of sexual harassment include, but are not limited to:

- physical contact such as pinching, touching, grabbing, kissing or hugging
- staring or leering at a person or at parts of their body
- sexual jokes or comments
- requests for sexual favours
- persistent requests to go out, where they are refused
- sexually explicit conversations
- displays of offensive material such as posters, screen savers, internet material etc.
- accessing or downloading sexually explicit material from the internet
- suggestive comments about a person's body or appearance
- sending rude or offensive emails, attachments or text messages

Bullying

What is workplace bullying?

- Workplace bullying is repeated, unreasonable behaviour by an individual or group of individuals, directed towards a worker or a group of workers that creates a risk to health and safety. It includes both physical and psychological risks and abuse.
- Repeated behaviour refers to the persistent nature of behaviour and can refer to a range or pattern of behaviours over a period of time e.g. verbal abuse, unreasonable criticism, isolation and subsequently being denied opportunities – i.e. a pattern is being established from a series of events.
- Unreasonable behaviour means behaviour that a reasonable person, having regard to all the circumstances, would view as unreasonable in the circumstances and may result in that employee feeling victimised, humiliated, undermined or threatened by that behaviour.
- Direct bullying workplace examples include but are not limited to:
 - abusive, insulting or offensive language or comments
 - spreading misinformation or malicious rumours
 - behaviour or language that frightens, humiliates, belittles or degrades, including over-criticising, or criticism that is delivered with yelling or screaming
 - displaying offensive material
 - inappropriate comments about a person's appearance, lifestyle, family, sexual preferences or any personal or private matter
 - teasing or regularly making someone the focus of pranks or practical jokes
 - interfering with a person's personal property or work equipment
 - harmful or offensive initiation practices
- Indirect bullying workplace examples include but are not limited to:
 - unreasonably overloading a person with work or not providing enough work
 - setting timeframes that are difficult to achieve or constantly changing them
 - setting tasks that are unreasonably below or above a person's skill level
 - deliberately excluding or isolating a person from normal work activities

- withholding information that is necessary for effective performance of the person's job
- deliberately denying access to resources or workplace benefits and entitlements e.g. training, leave etc
- deliberately changing work arrangements, such as rosters and leave to inconvenience a particular worker or workers
- A single incident of unreasonable behaviour does not usually constitute bullying. However, it should not be ignored as it may have the potential to escalate into bullying behaviour.
- A person's intention is irrelevant when determining if bullying has occurred. Bullying can occur unintentionally, where actions which are not intended to victimise, humiliate, undermine or threaten a person actually have that effect.
- Bullying in the workplace is harmful not only to the target of the behaviour but damages the business' culture and reputation. It is unacceptable and will not be tolerated.

What does not constitute workplace bullying?

- Managing workplace participants does not constitute bullying if it is done in a reasonable manner. Managers have the right and are obliged to manage workplace participants. This includes directing the way in which work is performed, undertaking performance reviews and providing feedback (even if negative), and disciplining and counselling staff.
- Examples of reasonable management practices include:
 - setting reasonable performance goals, standards and deadlines in consultation with workers and after considering their respective skills and experience
 - allocating work fairly
 - rostering and allocating working hours in a fair and reasonable manner
 - transferring a workplace participant for legitimate and explained operational reasons
 - deciding not to select a workplace participant for promotion following a fair and documented process
 - informing a workplace participant about unsatisfactory work performance in a constructive way and in accordance with any workplace policies or agreements
 - informing a workplace participant about inappropriate behaviour in an objective and confidential way
 - implementing organisational changes or restructuring
 - conducting performance management processes

Rights and responsibilities

- All workplace participants must:
 - be aware of, understand and comply with this policy
 - ensure they do not engage in any unlawful conduct towards other workplace participants or others they come into contact through work
 - ensure they do not aid, abet or encourage other persons to engage in unlawful conduct
 - follow the Complaints and Grievance policy if they experience any unlawful conduct

- report any unlawful conduct they see occurring to others in the workplace in accordance with the Complaints and Grievance Policy
- maintain confidentiality if they are involved in the complaint procedure
- Workplace participants should be aware that they can be held legally responsible for their unlawful conduct. Workplace participants, who aid, abet or encourage other persons to engage in unlawful conduct, can also be legally liable
- Training staff have a particular responsibility to ensure no student suffers discrimination or harassment. Training staff need to reinforce that students have a right make a complaint about being discriminated against or harassed, they need to outline the College's policies and procedure and to discuss options and outcomes.

Failure to comply with this policy

- All workplace participants are required to always comply with this policy. If a staff member breaches this policy, they may be subject to disciplinary action. In serious cases this may include termination of employment. Staff members who are found to have breached this policy may have their contracts with the College terminated or not renewed. Students who are found to have breached this policy may be suspended from attending the College.
- If a person makes an unfounded complaint or a false complaint in bad faith e.g. making up a complaint to get someone else in trouble or making a complaint where there is no foundation for the complaint, that person may be disciplined and may be exposed to a defamation claim.

PROCEDURES

The CEO is available to assist any issues in relation to harassment and discrimination. If a complainant requires an alternative support person, this will be arranged. The CEO is responsible for ensuring all complaints are dealt with in a sensitive, fair, timely and confidential manner.

Informal Procedure

An informal procedure can be undertaken by Managers or the CEO (depending on the parties involved) and may be used where:

- allegations are of a less serious nature but the individual subjected to the behaviour wants it to cease nonetheless
- the individual subjected to the behaviour wishes to pursue an informal resolution

Upon receiving a complaint, Managers/CEO should arrange to meet with the complainant at the earliest opportunity and then:

- respond quickly, professionally and in confidence
- provide information on the College's policy regarding discrimination and harassment
- explain that concerns may arise from misunderstandings that the other party is unaware of
- emphasise resolution rather than factual proof or substantiation of a complaint when using this informal procedure

Questions asked in the meeting could include:

- describe the incident(s) that is concerning you
- when and how often did it occur?
- do you have any evidence that supports your complaint e.g. emails, phone messages, witnesses?
- what would resolve the issue for you e.g. an acknowledgement of a misunderstanding, an apology, a commitment from the other party not to repeat the behaviour?

The individual who has been discriminated against or harassed may deal with the situation in one or more of the following ways:

- they may deal with the situation but seek advice from their Manager or the CEO
- they may ask their Manager/CEO to speak with the alleged individual on their behalf
- where a complaint is made and the alleged individual admits the behaviour, the Manager/CEO will endeavour to resolve the issue through conciliation and counselling

The respondent will be advised of the details of the complaint made against them and ensure they are provided with an opportunity to respond to the complaint.

Questions asked could include:

- Do you recall the incident?
- What is your response to the complaint?
- Do you have any evidence to support your response e.g. emails, phone messages, witnesses?
- What steps would you be prepared to take to resolve the matter e.g. acknowledgement of misunderstanding, make an apology, a commitment not to repeat the behaviour in the future

It is important that the respondent understands that the potential consequences if the matter is not resolved informally, which could include a formal investigation and misconduct proceedings.

Once both parties have been spoken to, an assessment of what has been explained and any other evidence received will be undertaken to make an evaluation as to whether the matter can be resolved at the local level. Common ground between the parties will be explored which could assist them in reaching a resolution. This involves:

- understanding what the common ground is – are the parties willing to reach a resolution?
- recognising what both parties want as a resolution; is it possible to achieve the desired outcomes? Is it a reasonable outcome to the complainant?
- providing information about the formal process, so parties are aware that the outcomes from a formal process may not be beneficial

Possible options for resolution include:

- clarifying a misunderstanding
- an apology where the respondent admits to the allegations

- mediation*
- Agreed action plan to avoid further incidents

Both parties will need to agree to the method of resolution, and once agreement has been reached agreed actions should be enacted promptly and documented.

*Note: Mediation should be approached with caution, as it can potentially escalate conflict between the parties. In most cases, using professional mediation should be considered. The Employee Assistance Program (EAP) can assist with providing this service.

A follow up meeting will be scheduled with both parties to check that the matter is resolved, and take further action if required. Meetings and interviews with all parties should be documented including details of who attended, action taken to respond to the issue, outcomes and any further action required.

Manager or Training Staff

- Where a Manager or training staff member observes unacceptable behaviour they may take independent action even though no complaint has been made. A staff member is not required to exhaust informal attempts at resolution before formal action commences.
- Although no record of complaints will be retained on the staff file of any party to a complaint, notes will be taken by the Manager/CEO as the complaint proceeds and will be stored under secure protocols with the CEO/Office Manager, only ever accessed by them or a delegated officer in an attempt to address this or later concerns, or as required by law.

Formal Procedure

The complainants Manager will conduct a formal investigation. The CEO will conduct a formal investigation if the complainant is or is about a Manager. The Board of Directors will be responsible for implementing the outcomes or deciding on a course of action if the complaint is about the CEO. Staff members also have the right to formalise their complaint or approach through an external agency such as the Fair Work Australia at any stage.

If the complainant decides to proceed they will be advised that:

- a full investigation will be made promptly and impartially
- they will not suffer any victimisation for a complaint based on a genuine belief
- the other party or parties (the respondent) will be given full right of reply and will be required not to treat the complainant unfairly or with detriment as a result of the complaint
- false or frivolous complaints could, where the complaint is a staff member, be subject to disciplinary action
- the Manager/CEO will focus on looking at whether a complaint can be substantiated, or at least if the parties can be brought together to try and reach a satisfactory outcome

The Manager/CEO (depending on the parties involved) will:

- interview the parties involved – all parties are permitted to have a union official, support person, advocate or other representative accompany them to any interviews or meetings
 - firstly interview the complainant and particularise the allegations in writing
 - secondly convey the allegations to the respondent in full and give them an opportunity to respond and defend themselves
- if there is a dispute over the facts, gather statements from witnesses and other relevant evidence
- complete a report documenting details containing:
 - the investigation process
 - the evidence
 - the finding based on a balance of probabilities
 - recommended outcomes
- retain the report on staff files of parties involved, stored under secure protocols with the CEO/Office Manager, only ever accessed by them or a delegated officer in an attempt to address this or later concerns, or as required by law
- monitor the investigation outcomes on a regular basis for at least 3 months
- where a complaint cannot be substantiated (that is, it cannot be confirmed that it did happen after a consideration of direct and surrounding evidence) the Manager/CEO will inform both parties of this and the reasons why and will also:
 - confirm the complainant's right to seek separate action through Fair Work Commission or the Anti-Discrimination Board
 - offer opportunities for counselling
 - establish fair procedures to deal with the parties ongoing concerns

When a complaint is substantiated

The CEO/Board of Directors may:

- implement disciplinary action e.g. demotion, transfer, suspension, probation or dismissal
- require a formal apology
- implement conciliation/mediation conducted by an impartial third party where the parties to the complaint agree to a mutually acceptable resolution
- give official warnings that are noted on the individual's staff file
- decide on disciplinary action against the person who complained if there is strong evidence that the complaint was vexatious or malicious

Appeals

If a complaint has not been properly dealt with the complainant can also approach the Fair Work Commission or Safe Work Australia. Where required e.g. complaints involving the CEO, the CEO's responsibilities can be undertaken by another staff member nominated by the Board.

The formal grievance process can take time, and can cause tension and high levels of emotion in the work place. Where there are indications that this is the case, support should be offered to

all staff members involved in the complaint, including the complainant, respondent and any witnesses such as an Employee Assistance Program. The importance of confidentiality in these proceedings also needs to be stressed, and any indicators that there are breaches of the College's policy on this matter should be addressed, as they can impact on the outcome of the investigation.

Support

It is important to advise your Manager about the issue and discuss the plan for resolution. This provides you with support and ensures that he/she is informed about the issue if there is a need to escalate it in the future.

Support can be provided by your Manager and the CEO or through the Employee Assistance Program (EAP). The College has contracted with AccessEAP to provide free professional confidential counselling to staff members and their immediate family members. This can be particularly helpful for staff members involved in a workplace grievance issue. The EAP is a short term intervention that provides support and assists clients with strategies to manage emotions, and re-referral where a longer term solution is required. It is not the role of the counsellor to make a judgement about whether there is discrimination, harassment or bullying.

The EAP also provides a support service to Managers who are dealing with complex and emotional people management issues in the form of Manager Support. This is generally provided by telephone by a suitably qualified AccessEAP consultant.

Support for students can be provided by your Trainer as a first point of call or through the student services available on the campus.

External Resources

- National Anti-Discrimination Information Gateway – provides information about discrimination and harassment legislation and external agencies that address complaints
- Fair Work Commission – provides information about the Fair Work Commission anti-bullying legislation and complaint handling processes
- Safe Work Australia Guide to Preventing and Responding to Workplace Bullying – a comprehensive guide that covers the work health and safety responsibilities of employers with regard to workplace bullying and aligns with the requirements of the Fair Work Act.

Compliance

The College's Discrimination, Harassment and Bullying Policy and related procedures contributes to compliance with the following legislation/regulations:

- Anti-Discrimination Act 1977
- Disability Standards for Education 2005
- Age Discrimination Act 2004 (Cth)
- Australian Human Rights Commission Act 1986 (Cth)
- Disability Discrimination Act 1992 (Cth)

- Racial Discrimination Act 1975 (Cth)
- Sex Discrimination Act 1984 (Cth)
- Work Place Gender Equality Act 2012 (Cth)
- Fair Work Act 2009 (Cth)

RELATED DOCUMENTS

Student Handbook

Trainer Handbook

Code of Conduct

Complaints and Grievance Policy and Procedure

Staff Recruitment Policy and Procedure

Work Health and Safety Policy and Procedure

Privacy and Confidentiality Policy and Procedure