

POLICY AND PROCEDURE FOR DISCRIMINATION, HARASSMENT AND BULLYING

PURPOSE

This policy sets out to ensure our workplace and learning environments remain free from harassment, discrimination, bullying and workplace violence.

APPLICATION OF THE POLICY

This policy applies to all the College's operations, including our related entities.

This policy does not form part of your contract and may be varied at any time by the business.

This Policy applies to the board, directors, staff members and students of the business, collectively referred to in this Policy as 'workplace participants'.

DEFINITIONS

Board – means the elected body that controls and manages 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.

OBJECTIVES

This policy is designed to assist the Central Coast Community College (the College/We) in its aims to:

- provide an environment where employees and others in the workplace are treated fairly and with respect, and are free from unlawful discrimination, harassment and bullying; and
- ensure that when employment decisions are made, they are based on merit, not on irrelevant attributes or characteristics that an individual may possess. The College also tries to create a work environment which promotes good working relationships.

POLICY STATEMENT

Central Coast Community College (the College/We) 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 our 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. For example, work lunches, conferences, Christmas parties and client functions.

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)
 - Physical features (VIC only)
 - Profession, trade, occupation or calling (ACT only)
 - Industrial/trade union membership, non-membership or activity
 - Political belief, opinion, affiliation, conviction or activity
 - Employer association membership, non-membership or activity
 - Irrelevant criminal record (NT and TAS only)
 - Employment activity (VIC only)
 - Irrelevant medical record (NT and TAS only)
 - HIV/AIDS
 - Defence service
 - Association (i.e. association with a person who has one or more of the attributes for which discrimination is prohibited)
 - Religious appearance or dress (in work or study) (SA only)
 - Gender history (WA only)
 - Association with a child (in customer service) (SA only)
 - Spent convictions (ACT only)

- While discrimination on the basis of irrelevant criminal record is only unlawful in the Northern Territory and Tasmania, a person may still make a complaint to the Australian Human Rights Commission about being discriminated against because of their irrelevant criminal record. Because this type of discrimination is not 'unlawful' under the Commonwealth laws, the Commission has no powers to make orders for compensation or make other orders to compel a party to do something. The Commission's powers are limited to making a recommendation for action (whether compensation or otherwise) and to 'tabling' their report in parliament (which is tantamount to 'naming and shaming').
- Separately to ordinary discrimination laws, there are laws in the Commonwealth, New South Wales, Queensland, the Australian Capital Territory, Northern Territory, Western Australia and Tasmania, that prohibit persons from taking spent criminal records into account or otherwise disclosing the details of a spent criminal record.

Harassment

- Harassment is unwelcome conduct directed towards a person based on a ground of discrimination (as set out above), 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 (for example, 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.
- Examples of workplace bullying
 - Bullying behaviours can take many different forms, from the obvious (direct) to the more subtle (indirect).
 - The following are some examples of both direct and indirect bullying.
- Direct bullying includes:
 - 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 includes:
 - 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 benefit and entitlements (For example, training, leave etc.)
 - deliberately changing work arrangements, such as rosters and leave to inconvenience a particular worker or workers.

The above examples do not represent a complete list of bullying behaviours. They are indicative of the type of behaviours which may constitute bullying and therefore are unacceptable to the business.

- 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:
 - understand and comply with this policy
 - ensure they do not engage in any unlawful conduct towards other workplace participants, customers/clients or others with whom 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 Appeals 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 Appeals 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 comply with this policy at all times. 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 Business Services Manager 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 Business Services Manager is responsible for ensuring all complaints are dealt with in a sensitive, fair, timely and confidential manner.

Informal Procedure

The informal procedure 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.

The Business Services Manager is the contact person for concerns regarding possible discrimination and harassment. Upon receiving a complaint, the Business Services Manager will arrange to meet with the complainant at the earliest opportunity.

The Business Services Manager will:

- 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;
- Emphasis resolution rather than factual proof or substantiation of a complaint when using this informal procedure;

Questions asked in the interview could include:

- Describe the incident(s) that are 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 the following ways;

- The individual may deal with the situation but seek advice from their manager or the Business Services Manager;
- The individual may ask the Business Services Manager to speak to the alleged individual on their behalf;
- Where a complaint is made and the alleged individual admits the behaviour, the Business Services Manager will endeavour to resolve the issue through conciliation and counselling;

Advise the respondent 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 you have spoken to both parties, assess what you have heard and any other evidence received to make an evaluation as to whether the matter can be resolved at the local level. Explore common ground between the parties that would assist them to reach 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 complaint?
- Providing information about the formal process, so they are aware that the outcomes from a formal process may not be beneficial to the parties.

Please note: It may be advisable to speak with your manager, before making the decision about the next steps.

Explore possible options for resolution including:

- 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 the matter 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 consideration of using professional mediation should be considered. The Employee Assistance Program (EAP) can assist with providing this service.

Schedule a follow up meeting 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 personnel file of any party to a complaint, notes will be taken by the Business Services Manager as the complaint proceeds and will be stored under secure protocols with the Business Services 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

Staff members have the right to formalise their complaint or approach from 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 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 mischievous complaints could, where the complaint is a staff member, be subject to disciplinary action;

- The Business Services Manager 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 Business Services Manager will:

- Interview the complainant and particularise the allegations in writing;
- Convey the allegations to the respondent in full;
- Give an opportunity to the respondent to respond and defend themselves;
- If there is a dispute over the facts, gather statements from witnesses and other relevant evidence;
- Submit a report documenting details to the Board of Directors containing:
 - The investigation process
 - The evidence
 - The finding based on a balance of probabilities
 - Recommended outcomes
- The Board of Directors will be responsible for implementing the outcomes or deciding on an alternative course of action;
- All parties involved are permitted to have a union official, support person, advocate or other representative accompany them to any interviews or meetings;
- The Business Services Manager will ensure that no unnecessary matters appear on personnel files.
- The Business Services Manager will keep all records that have passed in confidence for confidential storage;
- The Business Services Manager will monitor the investigation outcomes on a regular basis for at least 3 months or longer.
- 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 Business Services Manager will inform both parties of this and the reasons why:
 - Will confirm the complainant's right to seek separate action through Fair Work Commission or the Anti-Discrimination Board;
 - Will offer opportunities for counselling;
 - Will establish fair procedures to deal with the parties ongoing concerns.

Where a complaint is substantiated the following courses of action may occur:

The Board of Directors;

- may implement disciplinary action (eg: 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;
- May give official warnings that are noted on the individual's personnel file;
- May 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 Business Services manager, the Business Services Manager's responsibilities can be undertaken by another officer 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 Business Services Manager 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

Policy Classification: Human Resource Management
Document Owner: Human Resource Manager

Version #1: 31/12/2016
Review Date: 30/12/2017

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

Central Coast Community College's Harassment, Bullying and Anti-Discrimination Policy and related procedures shall contribute 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)*

VARIATIONS

The College reserves the right to vary, replace or terminate this policy from time to time.

RELATED DOCUMENTS:

- *Student Handbook*
- *Trainer Handbook*
- *Code of Conduct*
- *Policy and Procedure for Compliant and Appeals*
- *Policy and Procedure for Employee Recruitment*
- *Policy and Procedure for Work Health and Safety*
- *Policy and Procedure for Privacy and Confidentiality*