

# Bullying Harassment and Discrimination Prevention Policy

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Review	3 years from date of Approval		
Policy Code	GP012		
Contacts	policy@top.edu.au		
Version	Approval Authority	Approval Date	Commencement Date
2018.03	TOP Executive Team	06 March 2018	06 March 2018

## 1. Purpose

Top Education (TOP) is committed to maintaining a work and study environment free of discrimination and harassment and provides equal opportunities to staff and students. Although it is the primary role of Management to ensure appropriate standards of conduct are upheld, all staff and students have a responsibility to prevent and report instances of discrimination and harassment.

The purpose of this policy is to inform staff and students of their rights regarding equal opportunity and responsibilities in upholding appropriate standards of conduct. Behaviour involving discrimination or harassment is not tolerated under any circumstances, and it is essential that staff and students are aware of all relevant principles and processes. This policy also outlines TOP's procedures that enable complaints to be dealt with in a fair, timely and confidential manner.

TOP will take action against any staff or students who breach this policy. Further to TOP's action, staff and students may be subject to procedures set out in the Anti-Discrimination Act 1977 (NSW) as well as all relevant Commonwealth legislation.

## 2. Scope

This policy applies to all TOP students and professional and academic staff, including sessional staff. It also applies to contractors, consultants, Council and board members, and visitors.

## 3. Definitions

**Complainants** are persons who make a complaint because they feel they have been targets of discrimination, harassment or decisions leading to unequal opportunity.

**Bullying** means any repeated and unreasonable act that is directed at a person or a group of employees, and causes a reasonable person to feel humiliated, intimidated, offended, in fear of harm to themselves or their property.

**Discrimination** is the act of treating, or proposing to treat, a person less favourably than another person because of a personal attribute.

**Equal Opportunity** refers to staff and students having equal access to work and study opportunities free of discrimination.

**Grievance** is a complaint or conflict which arises out of an act, decision or omission which the grievant considers to be unjust, wrongful or discriminatory and which is within the control of TOP.

**Harassment** is any form of behaviour that is unwelcome and unreciprocated which makes the situation humiliating and/or intimidating for the person who is the target of that behaviour.

**Mediation** is a process by which the participants in a dispute, together with the assistance of a neutral person, systematically isolate disputed issues in order to develop options, consider alternatives, and reach consensual settlement that will accommodate their needs.

**Sexual Harassment** involves making unwanted sexual advances, requests, comments and unwelcome physical conduct towards another which would cause a person discomfort and/or offence.

**Victimisation** involves unfavourable and/or unfair treatment of a person because of their involvement in making or supporting an allegation of discrimination or harassment.

#### **4. Procedure**

##### Principles of Equal Opportunity

TOP undertakes to provide equal opportunity in all aspects of the work and study environment through:

- Applying merit-based criteria to staff recruitment and promotion processes;
- Remaining transparent and fair regarding student admission, assessment and progression;
- Providing equal access to resources, support services and career development opportunities;
- Ensuring all decision-making processes are based on non-discriminatory principles;
- Using non-discriminatory, inclusive language;
- Educating staff and students about appropriate behaviour in TOP's work and study environment;
- Ensuring the accountability of management and staff in upholding equal opportunity practices; and
- Maintaining confidentiality and dealing promptly with complaints of harassment, bullying and discrimination.

##### Discrimination

TOP aims to ensure that all staff and students understand that it is a fair and reasonable expectation that their work and study environment be free of discrimination, and that they have a responsibility to maintain that environment. Induction and orientation programs provide information to staff and students regarding their rights and responsibilities, and the possible consequences of a breach of this and/or other relevant policies.

Discrimination occurs when a person is treated less favourably on the grounds of an attribute (listed below) regardless of the motive of the person who engages in the conduct, and whether or not that person is aware that their behaviour amounts to discrimination. Discrimination may be direct, such as irrational judgments, or indirect, such as decisions that impact disproportionately on a particular group. Discrimination may be based upon personal attributes including, but not limited to:

- Age;
- gender/gender identity;
- sexual orientation;

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- relationship status;
- pregnancy;
- parental responsibilities including breastfeeding;
- race;
- ethnicity;
- religion;
- socio-economic background;
- disability;
- political belief/activity; and
- industrial relations activity.

### Harassment and Bullying

Harassment is not tolerated by TOP under any circumstances. Harassment is any behaviour or physical contact that makes another person feel uncomfortable, offended, humiliated or intimidated, where it could be reasonably anticipated that there would be a possibility of the behaviour causing offence.

Bullying is ongoing offensive behaviour that may not be linked to or based upon discrimination. However, it is considered harassment and is not tolerated in TOP's work and study environment.

Harassment often involves a misuse of power. It can occur between supervisors and staff, co-workers, students and between students and staff. Harassment can be subtle or overt. It includes bullying and other actions such as:

- offensive abuse and shouting;
- deliberate exclusion or isolation;
- spreading malicious rumours;
- sabotage of a person's work;
- sarcasm, ridicule and constant unreasonable criticism;
- setting impossible expectations/ allocating demeaning tasks;
- threatening gestures or actual violence;
- vilification aimed at inciting others to harass another person;
- offensive emails; and
- abusive comments on social media or internet chat rooms.

### Sexual Harassment

Sexual harassment is covered by this policy, irrespective of where and when it occurs. Acts of sexual harassment take many forms including but not limited to:

- unwanted and uninvited physical contact;
- sexual propositions;
- remarks or insinuations about a person's sex life or morality;
- suggestive comments about a person's appearance or body;
- sexually explicit conversations or jokes;
- offensive gestures;
- offensive displays of sexually graphic material;
- gender-based insults or taunting; and
- offensive comments conveyed via telephone, email or on social media or internet chat rooms.

### Procedures for dealing with complaints of discrimination, harassment and unequal opportunity

Procedures for dealing with complaints are based upon the following principles.

- Complaints are treated seriously and investigated promptly. TOP endeavours to maintain confidentiality and resolve issues in accordance with procedural fairness.
- Employees and students will not be disadvantaged by lodging a complaint. Anyone who victimises another person because of making a complaint, being a witness to a complaint or being involved in the investigation of a complaint will be subject to disciplinary action.
- TOP expects complaints to be made in good faith. Vexatious or frivolous complaints may result in disciplinary action being taken against those lodging such complaints.

Any employee or student who feels they have been a target of discrimination, harassment or decisions leading to unequal opportunity has the right to take appropriate action and make a complaint concerning their grievance. Any person who witnesses behaviour which breaches this policy should also take appropriate action.

*Procedures for dealing with complaints are listed below.*

#### **Informal Procedure**

1. Preliminary Action. Where possible, and where a person feels able, a direct approach to the other person is the preferred option. An explanation that the behaviour is unacceptable and a request to stop the behaviour may be an effective means of dealing with the current and potential issues.
2. Where it is not possible to directly approach another person, the matter should be reported to HR if concerns a staff member, and to the Dean if it concerns a student. In circumstances where the complaint involves HR or the Dean, the complaint should be made to the next higher level of management. Reports should be in writing and include details of dates, times, witnesses and a description of the instances of discrimination or harassment. Complainants are also encouraged to seek counselling and/or other support.
3. On receipt of a complaint the Dean/ HR must take immediate action. The Dean/ HR should meet immediately with the complainant to inform them of their options, and to offer counselling and support services if appropriate.
4. The Dean/ HR should consider the level of seriousness of the complaint, and decide whether or not the complaint involves student or staff misconduct and, if so, follow formal procedures as outlined below. If the complaint involves unlawful activity, the matter must be reported to police for investigation.
5. In circumstances not warranting formal procedures, the Dean/ HR should address concerns and take action to stop the behaviour. The complainant should be informed of all actions taken. Options for dealing with the complaint include:
  - Meeting with the person about whom the complaint is made to discuss the behaviour but not make an allegation;
  - With the permission of the complainant, discussing the allegations with the other person, advising them of necessary changes to future behaviour, explaining their rights, and referring them to material such as this and other relevant policies;
  - Recommend mediation and/or counselling;
  - Speak informally, and in general terms, to other students or staff to inform them of responsibilities; and
  - Organise training on equal opportunity, discrimination and harassment for students or staff as appropriate.

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## Formal Procedure

1. If the issue is not resolved **within two weeks**, or if the complaint involves misconduct, the Dean/ HR should advise the complainant to make a formal complaint in accordance with guidelines in TOP's *Workplace Grievance Policy* or *Student Grievance Mediation Policy*. The complainant should also be informed of their right to make an external complaint to: Australian Human Rights Commission; NSW Anti-Discrimination Board; or Fair Work Ombudsman.
2. Formal investigation of the complaint will be undertaken by HR, in consultation with TOP's General Counsel, who will consult with appropriate management staff regarding findings and recommended action to be taken. Action to be taken might include training for staff and students of the unit involved in the investigation.
3. TOP reserves the right to suspend any staff member or student, or to require specific directions to be followed during the investigation process.
4. If an investigation deems that this policy has been breached, appropriate disciplinary action may be taken against the person who has been the subject of the complaint. Action may include dismissal or expulsion from TOP.

## 5. Exclusions

This policy does not apply to incidents of discrimination, harassment and unequal opportunity that are beyond the control of TOP and/or are unrelated to TOP's work and study environment.

Reasonable direction does not constitute harassment. A legitimate part of the role of supervisors and lecturers is to offer advice and comment on performance. Reasonable direction includes, but is not limited to: constructive guidance and comment on unsatisfactory performance; counselling; and invoking unsatisfactory performance or misconduct procedures.

## 6. Related Documents

- Code of Conduct for Staff
- Employee Handbook
- Access and Equity Policy
- Recruitment and Selection Policy
- Working from Home Policy
- Workplace Health and Safety Policy
- Workplace Grievance Policy
- Student Grievance Mediation Policy
- Student Code of Conduct

## 7. Change and Version Control.

Historical Version	Approved by	Approval Date
2018.03	Top Executive Team	06 March 2018 Replaces Equal Employment Opportunity, Anti-Discrimination and Anti-Harassment Policy
2017.07	Top Executive Team	13 July 2017
2017.02	Top Executive Team	17 February 2017
2013.12	Top Executive Team	20 December 2013

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