



EQUAL OPPORTUNITY, HARASSMENT AND COMPLAINTS RESOLUTION POLICY

Revised August 2016

Introduction

Somers Primary School has a separate and general Equal Opportunity policy. The purpose of this policy is to outline kinds of behaviour and conduct which is undesirable and unlawful in Victoria, and to set out the complaints resolution procedures to be followed if such behaviour or conduct occurs at Somers Primary School.

Scope

This policy covers staff, students, parents and other persons present in the School at any given time.

Aims

The School Council and Principal are required to ensure that all staff, parents, students and other people present in the School environment are treated considerately, fairly and equitably and are not subject to discrimination, vilification or sexual harassment. The School is required to take reasonable precautions to ensure that discrimination, vilification or sexual harassment do not occur in the School environment.

Awareness

All staff should be thoroughly familiar with this policy. There should be regular discussion groups/training amongst staff about how to identify and deal with situations which may constitute discrimination, vilification or sexual harassment. The occurrence of such discussions/training and the participants, should be documented.

Definitions

For the purposes of this policy, there are three kinds of conduct, which are unacceptable at Somers Primary School. One is **discrimination**. The second is **vilification**. The third is **harassment**. Harassment in the form of bullying is not covered by this policy (refer separate *Harassment* policy). **Sexual harassment** is covered by this policy.

Discrimination

Discrimination is any less favourable treatment of a person which occurs because of an **attribute** possessed by that person. **Attributes** can include such things as sex, disabilities (mental or physical), race, ethnic origin, religion, political opinion, status as a parent or carer, marital status, pregnancy, or sexual preference.

Discrimination can be **direct** or **indirect**. One person can discriminate against another person without intending to. Motive is not necessary for discrimination.

Direct discrimination is conduct which directly produces less favourable treatment for a person. For example, expecting a student on crutches to negotiate stairs to all classrooms without assistance, or not providing ramps for a student who is in a wheelchair is direct discrimination.

Indirect discrimination is frequently the result of stereotyping, or making assumptions about people. It occurs when a requirement or condition is imposed on a person, and the person cannot comply as easily (or at all) with that requirement or condition because of an attribute that person has. In other words, the requirement or condition is imposed on everyone and on the surface appears “fair” but operates in a discriminatory way on certain people. Sometimes indirect discrimination will not be unlawful if the requirement is “reasonable” having regard to the particular circumstances.

An example of indirect discrimination in a school community might be requiring students’ parents to attend evening parent teacher meetings (i.e. giving no other options). This requirement applies to all parents, but single parents may have more difficulty complying, or may have to pay a babysitter.

Vilification

Vilification covers conduct (written, spoken or physical – i.e. gestures) which is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and is done because of an **attribute** of the person. Legislation such as the *Racial Discrimination Act 1975* (a Commonwealth Act of Parliament) makes vilification of people unlawful when it relates to a person’s race, colour or national or ethnic origin.

An example of vilification might be persistently making jokes at a school function meeting about aborigines.

Sexual harassment

Sexual harassment is the making of an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person, or engaging in other unwelcome conduct of a sexual nature where it would be reasonable to anticipate that the other person would be offended, humiliated or intimidated. This conduct may include words, gestures, and communications by letter or email. Again, it is not necessary that a person intend to humiliate, offend or embarrass another person. Frequently, sexual harassment results from simply failing to consider the feelings of another person.

Examples in a school environment might include:

- A male parent leering or staring provocatively at a female staff member.
- Grade six boys making persistent comments about the legs, figures or breasts of grade six girls.
- One staff member sending emails which have sexual suggestions or content to another staff member.

Many forms of sexual harassment actually constitute serious assaults and can be criminal offences.

Entitlement to make complaints

- Any person in the School environment is entitled to make a complaint if they believe they have been discriminated against, vilified or sexually harassed.
- Each complaint will be taken seriously by the School, investigated, and acted upon if it is concluded that action is necessary.
- Each complaint will be dealt with in strict confidence.

Victimisation

Victimisation occurs when a person who has made a complaint (whether formal or informal) is subsequently treated differently or less favourably by others in the School community because he/she has made a complaint.

A person against whom a complaint has been made could also be victimised and the School should always bear this possibility in mind when conducting an investigation of any kind.

Victimisation is unlawful and the School has a responsibility to take all reasonable precautions to avoid people who make complaints being victimised.

Confidentiality helps avoid victimisation. A transparent process is important to ensure that complainants and alleged perpetrators are not victimised in any way.

Complaint procedure

- Several mechanisms for complaint should be available in the School – **formal, informal** and, for students, a complaint mechanism which is initially **non-identifying**.
- These procedures should be publicised through the School newsletter, on the School noticeboard, and in the office and staffroom.
- Formal mechanisms should be used:
 - where the complainant asks for them to be;
 - where the alleged perpetrator asks for them to be;
 - where, in any event, the complaint raises serious conduct.

Formal complaints

- These should be made in writing to the Principal and lodged at the School office. A Pro forma Complaint Form is attached.
- Receipt of such complaints should be acknowledged in writing and a file established.
- Thereafter, the resolution of the complaint must be done in a confidential manner, including confidential record keeping. This means the only people who are involved in the process should be the complainant, the Principal and the Equal Opportunity Officer, if one has been appointed and the Principal believes it is necessary. Other people may be co-opted by agreement with the complainant.
- Formal complaints should be handled by an investigation process. This should involve:
 - Interviewing the complainant in a confidential setting and taking a written statement;
 - Interviewing any other people the complainant nominates, or whom the Principal believes need to be interviewed.
 - Interviewing the alleged perpetrator, summarising the complaints against him/her and giving him/her a chance to answer them and to state his/her 'side of the story'.
 - The Principal should then decide if the complaint has substance and what action, if any, needs to be taken. The Principal should produce some written findings at this stage and provide them to both the complainant and the alleged perpetrator.
- Possible actions if the complaint is found to have substance might include:
 - Asking the alleged perpetrator to apologise.
 - Convening mediation between the parties to develop strategies for them to continue working together in the School environment.
 - Deciding that the matter should be dealt with under the School's discipline policy.
- The complainant must be made aware that he/she can take the matter further if he/she wishes to. This advice should be given as part of the complaints resolution process. The complainant can, and may wish to:
 - Make a complaint to the Victorian Equal Opportunity Commission.

- Make a complaint to the Commonwealth Human Rights and Equal Opportunity Commission.
- Make a complaint to the Department of Education.
- Make a complaint to the Ombudsman (Commonwealth or State).
- Make a complaint to the Police.
- The complainant and the alleged perpetrator should both be told that they can seek advice from:
 - The Victorian Equal Opportunity Commission.
 - A lawyer.
 - Their union (if a staff member).
- Contact numbers for all these organisations should be available in the School office.

Informal complaints

Informal procedures emphasise resolution rather than factual proof or substantiation of a complaint. They are appropriate to less serious allegations and to situations where a complainant, having been properly and fully advised, elects to pursue a less formal resolution.

The Principal should still document the existence of a complaint, but also document that resolution is to be attempted informally. Informal resolution could consist of:

- A mediation session(s) between the Principal, the complainant and the alleged perpetrator, together with any other people the parties wish to be present.
- A private approach to the alleged perpetrator by the Principal, to point out that his/her behaviour is unacceptable and needs to stop.
- Outcomes of informal procedures will usually be limited to an apology, and undertakings about future behaviour.

Non-identifying complaints

Students in particular may feel embarrassed, intimidated or frightened by the conduct of another person which constitutes discrimination, vilification or sexual harassment.

The School should have a non-identifying complaint procedure to trigger awareness that a student is experiencing problems. This could be through a third person, another student or adult.

Precautions applicable to all complaint processes

- Action must be taken immediately to ensure that there is no further opportunity for the conduct to continue. The more serious the complaint, the more necessary this step becomes. If this involves moving staff or students from usual duties or classrooms, or altering attendance of parents at the School, then this should be done in a low key manner, ensuring that all parties are kept informed of what is being done and why.
- All participants must be informed, and reminded, about the need for complete confidentiality.
- In all complaints involving a student, parent(s) should be invited to be present, and must be kept fully informed.
- In all interviews, a complainant is permitted to have a support person of the complainant's choice present.
- In all interviews, an alleged perpetrator is permitted to have a support person present, of his/her choice and including a lawyer.
- Record keeping should ensure confidentiality attached to the files containing complaints and investigations. Particular care should be taken with documents stored electronically, and email should be used with care.

- No complaint should be disregarded or dismissed simply because there are no witnesses or the alleged perpetrator denies the conduct. It is typical of discrimination and sexual harassment that there are no witnesses and the conduct is denied.
- Reporting requirements to the Department of Education should be strictly observed.
- School Council should be informed of any complaints, their resolutions and outcomes, in a non-identifying way.

Possible Outcomes

The aim of any process is to ensure that all parties are treated fairly and with respect, and that substantiated complaints receive adequate and proper resolution. Such resolutions may include (in ascending order of severity, although these outcomes are not mutually exclusive):

- Private discussion.
- Mediation.
- Apologies.
- Counselling.
- Modification of School discipline procedures, playground conduct.
- Modification to social behaviour teaching in classrooms.
- Voluntary withdrawal of students from the School.
- Voluntary withdrawal of a parent from School activities, or from School premises.
- Resignation of a staff member.
- Initiation of a formal complaint to a statutory body such as the EOC or the Police.
- Negotiated settlement which includes some of the above outcomes, as well as financial compensation.
- Criminal charges.

The following procedures are unlikely to occur without findings or decisions from the Department of Education, a Court, a tribunal or some other disciplinary body:

- Expulsion of a student.
- Dismissal of a staff member.
- Financial compensation.
- Intervention orders against a parent.

This policy should be reviewed every two years.

PROFORMA COMPLAINT FORM

1. Please state your name, address and daytime telephone number:

.....
.....
.....
.....

2. Who is your complaint against?

.....
.....

3. When did the incident you are complaining about happen?

.....
.....

4. Where did the incident happen? (if more than one place, write all of them):

.....
.....
.....
.....

5. Describe briefly what happened:

NB: you will have a chance to describe what happened in more detail later

.....
.....
.....
.....
.....

6. Is there anyone in particular (aside from the Principal, who must be involved) in the School community you want to help resolve your complaint?

.....
.....
.....