

DISCRIMINATION AND HARASSMENT POLICY AND PROCEDURE

Introduction

Numurkah Community Learning Centre Inc. recognises it is the right of every employee, independent contractor, volunteer, student and any other member of the public to be able to carry out their study, work or other duties without being subjected to any form of discrimination or harassment.

Equally it is the obligation and responsibility of every employee, independent contractor, volunteer, student and any other member of the public to ensure that the workplace is free from discrimination and harassment. This policy also applies to employees, independent contractors, volunteers and students who conduct or attend any other work, field trip, excursion or meeting outside the Numurkah Community Learning Centre Inc. premises.

Numurkah Community Learning Centre Inc. is fully committed to its obligations to eliminate discrimination and harassment in the workplace and in customer relations.

Policy

Numurkah Community Learning Centre Inc. will not tolerate any form of discrimination or harassment under any circumstances. The responsibility lies with every employee, independent contractor, volunteer, student and any other member of the public to ensure that discrimination or harassment does not occur.

Harassment does not have any legitimate workplace function. Numurkah Community Learning Centre Inc. will not tolerate harassment under any circumstances. The responsibility lies with every Manager, Supervisor, Employee, Volunteer and Student to ensure that harassment does not occur.

Numurkah Community Learning Centre Inc. considers that legislative obligations under the Acts establish minimum standards of behaviour for employees.

The principles set out in this policy are intended to apply to any work-related context, including conferences, work functions, social events and business trips.

Where a breach of this policy occurs and as a result Numurkah Community Learning Centre Inc. receives a grievance or complaint, Numurkah Community Learning Centre Inc. will undertake the process as set out in the Complaints and Appeals Policy.

Numurkah Community Learning Centre Inc. strongly encourages any employee, independent contractor, volunteer, student and any other member of the public who feels they have been discriminated or harassed to take action, as per the procedure as set out in the Complaints and Appeals Policy.

Any reports of discrimination or harassment will be treated seriously and promptly with sensitivity and complete confidentiality. Complainants have the right to determine how the complaint be treated, have support, have representation throughout the process, and/or have the option to discontinue a complaint at any stage of the process.

The alleged discriminator or harasser will be given the right to have a support person of their own during any investigation procedures, to give representation and advice throughout the process and to

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respond fully to any formal allegations made. There will be no presumptions of guilt and no determination made until a full investigation has been completed.

No employee, independent contractor, volunteer, student and any other member of the public will be treated unfairly as a result of complaining of discrimination or harassment. Disciplinary action may be taken against anyone who victimises or retaliates against a person who has complained of discrimination or harassment, or against any employee, independent contractor, volunteer, student and any other member of the public who has been alleged to be a harasser.

All employees, independent contractors, volunteer, students and any other member of the public reserve the right to seek the assistance of the relevant tribunal or legislative body to assist them in the resolution of any concerns.

Managers or Supervisors who fail to take appropriate corrective action when aware of discrimination or harassment of a person will be subject to disciplinary action.

Definitions

Discrimination - Discrimination is treating an individual with a particular attribute less favourably than an individual without that attribute or with a different attribute under similar circumstances; also, seeking to impose a condition or requirement on a person with an attribute who does not or cannot comply, while people without that attribute do or can comply.

Harassment - Harassment is uninvited, unwelcome behaviour, which does not have any legitimate workplace function. Harassment includes any written, physical, or verbal conduct that from the perspective of a reasonable person is intimidating, offensive or humiliating against another person.

This policy must be read in conjunction with the:

- Complaints and Appeals Policy
- Suspension, Expulsion and Withdrawal Policy

Procedure

Current legislation states that it is illegal to discriminate, victimise, harass or vilify on the basis of:

- sex;
- sexual harassment;
- pregnancy;
- potential pregnancy;
- marital/domestic status;
- disability;
- race, colour, national extraction, social origin, descent, and ethnic, ethno-religious or national origin;
- age, compulsory retirement;
- family responsibilities, family status, status as a parent or carer;
- racial vilification;
- homosexual vilification;
- HIV/AIDS vilification;
- religious belief or activity;
- political belief or activity;
- physical features;
- industrial activity;
- employer association activity;
- trade union activity;
- breastfeeding;
- sexuality;
- transsexuality;
- transgender;

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- profession, trade, occupation or calling;
- medical record; and
- criminal record

Discrimination and harassment can occur at any level of the organisation, can be experienced by both men and women and may involve a co-worker, a volunteer, Supervisor, Manager, student, service provider, client or customer. Lack of intent is no defence in discrimination or harassment cases.

Formerly agreed behaviour may be found to be harassment or discrimination when it continues after a request from the recipient for the behaviour to stop, or at the point it becomes intimidating, offensive or humiliating.

Employees, independent contractors, volunteers, students and any other members of the public who believe they are the subject of discrimination or harassment should take firm, positive and prompt action as per the procedure set out in the Complaints and Appeals Policy

If deemed appropriate the employee, independent contractor, volunteer, student and any other member of the public should make the perceived harasser(s) aware that they find their behaviour offensive, unwelcome, unacceptable, and that it needs to stop immediately.

If the behaviour continues, or if the employee, independent contractor, volunteer, student and any other member of the public feels unable to speak to the person(s) directly, they should contact the relevant person as stated in the Complaints and Appeals Policy.

Informal Intervention

The Coordinator will explain the employee's, independent contractor's, volunteer's, student's and any other member of the public's rights and responsibilities under organisational policy, procedures and Equal and Employment Opportunity/Anti-discrimination Legislation.

Informal Intervention may be done through a process of either mediation or conciliation. During Informal Intervention the respondent will be made aware of the allegations being made against them and will be given the right to respond. During this process all conversations, mediation and/or conciliation will be documented. All records will be kept and filed in a confidential and secure place. If no confidential area is available these notes may be sealed and forwarded to the Corporate Services Unit, where they will be maintained, unopened, in a confidential filing system. These records should be kept for a period of seven years. Under no circumstances will records be placed on the complainant's personnel file.

This procedure will be complete when the alleged harasser respects the individual's request to cease unwanted and unwelcome behaviour. If this does not occur, the formal procedure should be followed.

Formal Complaints Procedure

Proceeding with a formal complaint requires the complainant to lodge a formal Complaints and Appeals Form, particularly as witnesses or senior Management may become involved. The formal procedure will be followed as per the procedure set out in the Grievance, Complaints and Appeals Policy.

The Coordinator should clarify the complaint and obtain a step by step account of the incident. In serious cases, more than one interview may be necessary.

The Coordinator will document all such interviews accurately and avoid irrelevant information. This will include parties involved, timing, location, and nature of conduct complained against.

Records are to be kept and filed in a confidential and secure place. If no confidential area is available these notes may be sealed and forwarded to the Corporate Services Unit, where they will be maintained, unopened, in a confidential filing system. These records should be kept for a period of seven (7) years. Under no circumstances will records be placed on the complainant's personnel file.

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The Manager will organise an investigation, which in most cases may involve but is not be limited to:

- a private interview to ascertain the facts and what the complainant expects to happen as a result of making the complaint;
- contact/interview with the alleged harasser(s) to ascertain their defence;
- interviews with other employees, independent contractors, volunteers, students or individuals who may be able to assist;
- examination of any relevant documents;
- determination of previous behaviours or issues.

All evidence should be forwarded to the person/s conducting the investigation. Such evidence may include:

- supporting evidence provided by a medical practitioner, counsellor, family member, friend or co-worker;
- Supervisor's reports and personnel records (e.g. unexplained request for transfer or shift changes, sudden increase in sick leave);
- complaints or information provided by other employers about the behaviour of the alleged harasser;
- records kept by the person claiming to have been harassed;
- information on whether the evidence was presented by the parties in a credible and consistent manner;
- information on the absence of evidence where it should logically exist.

On completion of the investigation the complainant and the coordinator will determine a course of action to be taken. It may be decided at this point that the matter be referred to the NCLC Committee of Management.

At this stage the alleged discriminator or harasser will be notified in writing of the allegations and will be suspended from work/course/class until the matter is resolved.

Possible course of actions may include, but not be limited to, any combination of the following:

- counselling;
- disciplinary action against the discriminator or harasser (e.g. demotion, transfer, suspension, probation, dismissal, withdrawal from course);
- official warning which will be noted in the discriminator's or harasser's personnel file;
- disciplinary action against the person who complained if there is strong evidence that the complaint was vexatious or malicious;
- formal apologies and undertaking that the behaviour will cease;
- conciliation/mediation conducted by an impartial third party where the parties to the complaint agree to a mutually acceptable resolution;

Outcomes will depend upon factors such as:

- the severity and frequency of the discrimination or harassment;
- the weight of the evidence;
- the wishes of the person who was subjected to discrimination or harassment;
- whether the discriminator or harasser could have been expected to know that such behaviour was a breach of policy;
- the level of contrition;
- whether there have been any prior incidents or warnings.

The Coordinator or NCLC Committee of management will advise all relevant parties of the outcome.

If the investigation determines that discrimination or harassment has occurred, the Coordinator or NCLC Committee of management must forward a summary of the complaint and the action taken to the Dispute Resolution Centre.

If there is insufficient proof to decide whether or not discrimination or harassment occurred, the Coordinator will:

- remind those involved of expected standards of conduct;
- conduct further training awareness raising sessions for employees, independent

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- contractors and volunteers;
- monitor the situation carefully.

The Coordinator will monitor the outcome to ensure that the offensive behaviour has ceased, and that neither party has been victimised. This may involve follow-up interviews. If there has been any substantiated victimisation, disciplinary procedures will be followed.

Dealing with Criminal Conduct

Some forms of severe discrimination or harassment may constitute criminal conduct. e.g. physical attacks, obscene phone calls, etc. While NCLC is committed to treat most discrimination and harassment complaints at an organisational level as far as possible, this type of conduct is not suited to internal resolution. Such complaints should be treated by the criminal justice system. Employees, independent contractors, volunteers and students should be advised of the option of police support or intervention. It is not the obligation or duty of the organisation to report such matters to the police on behalf of the complainant.

Responsibility

It is The Committee of Management's responsibility to ensure that:

- they understand and are committed to the rights and entitlements of all employees, independent contractors, volunteers and students to attend work and perform their duties, without fear of being discriminated against or harassed in any form;
- all reasonable steps to eliminate discrimination and harassment are made;
- all employees, independent contractors and volunteers are regularly made aware of their obligations in relation to providing a workplace free from discrimination or harassment;
- they provide an environment which discourages harassment and victimisation and set an example by their own behaviour;
- all complaints are treated seriously and confidentially;
- they take immediate and appropriate corrective action if they become aware of any offensive action.

It is the Employees', independent contractors' volunteers' and students' responsibility to ensure that:

- they understand and are committed to the rights and entitlements of all employees, independent contractors, volunteers and students to attend work or class and perform their duties without fear of being discriminated against or harassed in any form;
- they provide an environment which discourages victimisation, discrimination and harassment ;
- they immediately report any offensive action.

It is the Coordinators' responsibility to ensure that:

- guidance and education is provided, where requested and/or appropriate, to cases and subsequent decisions relating to discrimination or harassment;
- employees, independent contractors, volunteers and students are aware of their obligations and responsibilities in relation to discrimination or harassment, and the rights and entitlements of their employees;
- ongoing support and guidance is provided to employees, independent contractors, volunteers and students in relation to the prevention of discrimination or harassment.

Related Documents

- Access and Equity Policy
- Record Keeping Policy
- Grievance, Complaints and Appeals Policy
- Complaints and Appeals Form
- Enrolment Policy
- Privacy Policy
- Suspension, Expulsion and Withdrawal Policy
- Legislation Policy

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