

1. Policy

1.1. Policy context

It is the policy of The King David School that the learning and working environment is positive and supportive for all members of the School community. Therefore, The King David School is committed to ensuring that the working and learning environment is free from discrimination, harassment (including sexual harassment), vilification, victimisation and bullying.

The King David School aims to:

- foster an environment where all members of the School Community are treated with dignity, courtesy and respect;
- promote appropriate standards of conduct at all times;
- implement training and awareness-raising strategies to ensure that everyone knows their rights and responsibilities; and
- where necessary encourage reporting of inappropriate behaviour and provide an effective procedure for resolving complaints in a sensitive, fair and timely manner and as confidentially as possible.

This Policy sets out what constitutes discrimination, harassment (including sexual harassment), vilification, victimisation and bullying and what you can do in response. It also details the complaints procedure which The King David School has implemented to ensure that any form of discrimination, harassment (including sexual harassment), vilification, victimisation or bullying is dealt with promptly, confidentially and impartially.

1.2 Policy scope

This Policy covers:

- members of The King David School Council
- employees
- applicants for positions of employment, students undertaking work experience, contractors, subcontractors (and their employees) and volunteers.

In this Policy, **employee** is considered to include the above persons.

This Policy applies to:

- the provision of services within the School community
- interactions with service providers, suppliers and members of the public in the course of undertaking School duties
- all aspects of employment
- the workplace, which extends beyond the School's physical boundaries and set times of work, and includes after-hours work, staff meetings, School camps and excursions, conferences, School-authorised functions and activities.

1.3 Employee responsibilities

All employees have a responsibility to treat each other with courtesy, dignity and respect. Individual employees must also ensure that they do not discriminate against, harass, sexually harass, vilify, victimise or bully other employees.

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1.4 Additional responsibilities of managers and supervisors

Managers and supervisors are expected to:

- role-model appropriate standards of behaviour for all members of the school community
- take action to ensure their staff are educated and aware of their obligations under this policy and law
- intervene promptly, fairly and appropriately when they become aware of inappropriate conduct or behaviour
- wherever possible, assist staff in informal (non-disciplinary) resolution of problems and complaints
- refer formal complaints about breaches of this policy to the Human Resources manager for investigation
- take action to ensure that staff who raise an issue or make a complaint are not victimised for doing so
- act impartially in resolving issues and enforcing appropriate workplace behaviour and conduct, and ensure relevant parties have an opportunity to be heard.

Any reports of discrimination, harassment (including sexual harassment), vilification, victimisation or bullying will be treated seriously by the School. Disciplinary action may be taken against anyone where a complaint of discrimination, harassment (including sexual harassment), vilification, victimisation or bullying has been substantiated.

2. Legislation

Both Federal and State legislation is relevant to the concepts discussed in this policy. This legislation includes:

Federal:

Age Discrimination Act 2004

Disability Discrimination Act 1992

Workplace Gender Equality Act 2012

Fair Work Act 2009

Racial Discrimination Act 1975

Sex Discrimination Act 1984

Australian Human Rights Commission Act 1986

Victorian:

Equal Opportunity Act 2010

Occupational Health and Safety Act 2004

Racial and Religious Tolerance Act 2001

WorkSafe Victoria publishes a handbook titled *Your Guide to Workplace Bullying- Prevention and Response* which provides guidelines for dealing with bullying in workplaces.

3. Discrimination

It is unlawful to discriminate against or harass a person in employment (or in the provision of goods and services) on the basis of an attribute.

3.1 Attributes

Protected attributes in Australia include the following:

- age
- disability or impairment (physical, intellectual, mental or psychiatric – visible or invisible, temporary or permanent)
- race, colour, descent or national or ethnic origin, including First Nations people.
- religious belief or activity
- sex

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- gender identity
- transgender or transsexual status
- lawful sexual activity/sexual orientation
- family, marital, parental or carer status
- physical features
- political opinion, belief or activity
- industrial activity or membership of an industrial association
- pregnancy or potential pregnancy
- breastfeeding
- medical record
- irrelevant criminal record
- employment activity
- personal association with a person who is identified by reference to any of the above attributes.

Discrimination is treating a person with an identified attribute or personal characteristic less favourably than a person who does not have the attribute or characteristic. Discrimination can be either direct or indirect.

3.2 Direct discrimination

Direct discrimination occurs if a person treats, or proposes to treat, a person with a protected attribute covered by an equal opportunity law unfavourably because of that attribute regardless of whether the person is aware of the discrimination or considers the treatment to be unfavourable.

3.3 Indirect discrimination

Indirect discrimination occurs where a person imposes, or proposes to impose, a requirement, condition or practice that has, or is likely to have, the effect of disadvantaging people with a protected attribute, and that is not reasonable.

Awareness of the discrimination is irrelevant.

3.4 Family responsibilities

The National Employment Standards and the *Equal Opportunity Act 2010* (Vic) (the Act) both place a positive obligation on the School to consider an employee's request for flexible working arrangements to accommodate their parental or carer responsibilities. Such a request can only be refused on reasonable business grounds.

In considering a request from an employee, reasonable business grounds may include whether the new working arrangements requested by an employee:

- would be too costly for the employer
- are such that there is no capacity to change the working arrangements of other employees to accommodate the request
- are such that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the request
- would be likely to result in a significant loss in efficiency or productivity
- would be likely to have a significant negative impact on customer service.

A request for flexible work arrangements will be assessed individually, based on the unique facts and circumstances of each request.

Managers must not refuse any request for flexible working arrangements where the request is related to family responsibilities without having first discussed the matter with the applicant and with the Human Resources Manager or other authorised representative of the Principal.

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The National Employment Standards have an expanded scope which means that an employee may also make a request for flexible working arrangements where the following circumstances apply:

- the employee has a disability
- the employee is 55 years or older
- the employee is experiencing violence from a member of the employee's family
- the employee provides care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing family violence.

Further detail regarding making requests for flexible work arrangements can be found in the School's Flexible Working Policy which can be located on the Staff Portal.

3.5 Disability

The Act places a positive obligation on the School to make reasonable adjustments for an employee or prospective employee who has a disability, as defined by the Act.

The Act requires that the School must make reasonable adjustments unless the person or employee could not or cannot adequately perform the genuine and reasonable requirements of their employment even after the adjustments are made.

In determining whether an adjustment is reasonable, the Act provides that an employer should give consideration to all relevant facts and circumstances, including:

- the person's or employee's circumstances, including the nature of his or her impairment
- the nature of the employee's role or the role that is being offered
- the nature of the adjustment required to accommodate the person's or employee's impairment;
- the financial circumstances of the employer
- the size and nature of the workplace and the employer's business
- the effect on the workplace and the employer's business of making the adjustment including—
- the financial impact of doing so
- the number of persons who would benefit from or be disadvantaged by doing so
- the impact on efficiency and productivity and, if applicable, on customer service of doing so
- the consequences for the employer of making the adjustment
- the consequences for the person or employee of not making the adjustment.

Prior to any decisions pertaining to an employee request for adjustment/s on the basis of disability being determined it is expected that the relevant manager or supervisor will have sought appropriate advice from the Principal, Head of School, COO, Human Resources Manager or other authorised representative of the Principal.

4. Harassment

Harassment is a form of discrimination. Harassment is unwelcome and unwanted conduct based on one of the attributes listed above that causes a person to be offended, humiliated or intimidated.

Harassment can take many forms and may include physical contact, verbal comments, electronic messages (including messages posted on social media), jokes and gestures and other behaviour that creates an uncomfortable or hostile environment. Unacceptable behaviour includes but is not restricted to:

- the display of offensive materials (e.g., based on race)
- visiting and/or displaying internet sites containing offensive materials (e.g., sexually explicit)
- electronic messages that are sexually offensive or offensive in relation to race, disability, sexuality or gender diversity
- derogatory comments about any particular personal attribute or about a person or a group on the basis of race, disability, sexuality or gender.

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- intimidation or verbal abuse oriented at a person with a disability or using aids or with different capabilities, or at the person's carer
- practical jokes about a person's disability, race, sexuality or gender,
- segregation or humiliation of a person with a disability or a person or group based on race, sexuality, gender, or any other personal attribute
- derogatory comments or jokes about a person or group on the basis of their personal characteristics, sexuality or gender.

The reasonable person test applies. That is, would a reasonable person, given all the circumstances, have anticipated that the behaviour would be found offensive, humiliating or intimidating.

5. Sexual harassment

A person sexually harasses another if he or she:

- makes an unwelcome sexual advance
- makes a request for sexual favours or
- engages in any other unwelcome conduct of a sexual nature
- in circumstances in which a reasonable person, aware of all of the circumstances, would have anticipated that the conduct would cause offence, humiliation or intimidation.

Sexual harassment is unwelcome, uninvited conduct that is offensive from the perspective of the person harassed, regardless of any innocent intent on the part of the offender.

It is not behaviour that is based on mutual attraction between people or friends.

Sexual harassment may occur as a single incident or involve a series of incidents.

Types of sexual harassment

Sexual harassment can take many forms and can be physical, verbal or written. It is not just the obvious harassment of unwelcome physical behaviour such as inappropriate touching, patting, brushing up against someone or offensive gesturing. Sexual harassment can either be direct or indirect.

Sexual harassment takes a variety of forms, including:

- sexual or suggestive remarks
- sexual propositions or requests for dates
- repeated questions or speculation about a person's private life
- sexual jokes and innuendo
- unnecessary intrusion into a person's personal space
- physical contact such as touching, deliberate brushing up against a person, hugging etc. against a person's will
- offensive telephone calls, reading matter, email, screen savers, pictures, calendars etc.
- suggestive looks or leers
- sexually explicit conversations
- displaying or sending sexually explicit material.

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6. Bullying

Workplace bullying is repeated, unreasonable behaviour directed towards an employee or a group of employees that creates a risk to health and safety.

Repeated behaviour refers to the persistent nature of the behaviour and can involve a range of behaviours over time.

Unreasonable behaviour is behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten another.

Risk to health and safety includes risk to the mental or physical health of the employee.

Unacceptable behaviour makes the workplace uncomfortable, unpleasant and often unsafe. The following types of behaviour, where repeated or occurring as part of a pattern of behaviour, could be considered bullying:

- verbal abuse (including threats, shouting, sarcasm or other forms of demeaning language)
- unjustified criticism or complaints
- excluding or isolating employees
- excessive scrutiny at work
- assigning meaningless tasks unrelated to the job
- giving employees impossible assignments (e.g. setting unreasonable deadlines)
- deliberately changing work arrangements (e.g. rosters or leave) to inconvenience a particular employee or employees
- denying access to information, supervision, consultation or resources vital for effective work performance.

The list is not exhaustive. Other types of behaviour may also constitute bullying. A single incident of unreasonable behaviour is not considered to be workplace bullying, however, it may have the potential to escalate and should not be ignored. Bullying does not include reasonable and legitimate actions of The King David School in managing an employee's performance, managing or altering an employee's workload, reporting structure or duties or counselling an employee.

Bullying may breach occupational health and safety law.

Bullying may constitute a crime under the *Crimes Amendment (Bullying) Act 2010* (Vic), which amended the *Crimes Act 1958* (Vic), extending the scope of the current stalking laws to capture the behaviour associated with workplace bullying. If convicted a maximum penalty of ten years imprisonment applies.

7. Vilification

Vilification is behaviour, through word or action, that incites hatred, contempt or ridicule of another person or group, generally because of that person's or group's race or religious belief.

Examples of vilification include but are not restricted to:

- public threats of harm
- encouraging others to hate someone because of that person's religion
- a racist statement in a public meeting
- racist graffiti.

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8. What can you do if you feel that you are being discriminated against, harassed, sexually harassed or bullied?

If you feel you have been discriminated against, harassed, sexually harassed or bullied, you should not ignore it. You should keep notes on all instances of discrimination, harassment or bullying – dates, times, places, witnesses (if any), together with what you said, did or felt.

If you feel comfortable doing so, then you may wish to address the issue with the person concerned and request that the behaviour ceases. If you do not feel comfortable confronting the person and the behaviour continues, then you should go to one of The King David School's Contact Officers and discuss your complaint.

All complaints of discrimination, harassment, sexual harassment or bullying will be dealt with in accordance with The King David School's procedure which is set out below. The King David School's goal is to resolve all issues and complaints in-house where possible. However, you can seek the assistance of an outside agency, at any stage, if you wish.

9. What should you do if you consider you have witnessed bullying?

You should report the matter to either the Principal, Human Resources Manager, Head of School or COO. Appropriate action will be taken in accordance with The King David School's procedure which is set out below.

10. Complaints procedure

The King David School will take any complaint under this policy seriously and will invoke either the informal or formal complaints procedure outlined below.

If an informal approach is taken but the desired result is not achieved, then a formal approach can be adopted. If the complaint is sufficiently serious, then a formal approach may be taken without first invoking the informal approach.

10.1 Informal complaint procedure

▪ *Raising your complaint with the Contact Officer*

The Contact Officer is someone with whom you can discuss your situation and lodge your complaint.

When you meet with the Contact Officer to discuss your complaint, he or she will explain the relevant steps that will be taken to address your complaint. The Contact Officer will not act as a mediator or investigator and will not make disciplinary decisions in relation to your complaint. The Contact Officer may assist you in handling your complaint directly with the person(s) involved or in making a formal complaint.

▪ *Conciliation*

Conciliation is a confidential process involving only the conciliator and the affected employee/s. The conciliator could be a manager, another person in the workplace or a professional counsellor/conciliator. All parties must agree to participate in the conciliation to enable this approach to be implemented.

The role of the conciliator is not to make formal findings. The conciliator will assist the parties to reach a mutually agreed resolution.

If the complaint is not resolved through conciliation, you can request that the complaint be investigated in accord with the formal complaint procedures detailed below.

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10.2 Formal complaint procedure¹

▪ **Investigation of the complaint**

A formal written complaint needs to be submitted, including details of the allegations, dates, times and the names of any witnesses. Upon receipt of the complaint, the Principal, or a formally delegated person, including a senior staff member or an external person or organisation, will commence a formal investigation of the matter. The task of the investigator is to establish what evidence or facts can be found that may either substantiate or refute the allegations.

The investigation will be undertaken in a timely manner and will be conducted as confidentially as possible. It may be necessary for the investigator to interview a number of people, including the complainant, the respondent and any other person who may have witnessed the alleged incident/s or behaviour/s.

The respondent will be provided with details of the complaint in writing and asked to provide a formal response within 10 days.

The parties involved in the investigation process will be asked to maintain confidentiality with respect to the complaint and the investigation. The King David School may, however, need to divulge the contents of the complaint and responses in order to complete a full investigation. The parties will be entitled to be supported by a person of their choice.

The principle of natural justice demands that the process be based upon an assumption of innocence unless and until evidence shows otherwise. A determination will be made on the basis of the information gathered during the investigation; such findings will be made on the balance of probabilities.

Both the complainant and the respondent shall be informed, in writing, of the outcome of the investigation.

Reported findings then form the basis of appropriate action by The King David School to respond to both the individual and organisational matters addressed in the findings.

▪ **External agency**

You are able to seek advice from and/or lodge a complaint with an external agency including the Victorian Equal Opportunity and Human Rights Commission, the Australian Human Rights Commission, the Fair Work Commission and WorkSafe Victoria.

However, the goal of The King David School is to resolve all issues and complaints in-house where possible. The King David School appreciates being given the opportunity to resolve any matter of alleged discrimination, harassment or bullying before a complaint is lodged with an external agency. If a complainant is not satisfied with The King David School's actions, then the right to lodge a complaint with an external body remains.

Possible outcomes

The possible outcomes will depend upon the nature of the complaint. Where an investigation has found that a complaint is substantiated, appropriate action will be taken against the person about whom the complaint was made. This may include disciplinary action up to and including termination of employment in serious cases. Other possible outcomes may include:

- an apology where appropriate
- counselling
- mediation between the parties where appropriate
- an agreement to refrain from the offending conduct or behaviour
- training for individuals or relevant sections, where appropriate
- changed work arrangements
- a formal written warning that any future substantiated breaches of acceptable workplace behaviour will result in termination of employment.

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11. Victimisation

Victimisation is treating someone unfairly because that person, or someone they associate with, has made, or intends to make, a complaint under this policy. It is unlawful to victimise or penalise a person for making a complaint in good faith. The King David School is committed to making sure that anyone who makes, or assists in making, a genuine complaint is supported and not penalised in any way.

Immediate disciplinary action will be taken against any employee who victimises or retaliates against a person who has made a complaint.

12. Vexatious complaints

Inaccurate, misleading, malicious or false accusations have negative consequences for the person(s) concerned, interpersonal relationships and the morale of the School Community.

Where it is found that a complaint has been made in bad faith to cause distress to one or more persons, or as a practical joke, disciplinary measures will be taken.

13. Further information

Further information concerning any aspect of this policy may be directed to the Human Resources Manager.

Information is also available from external agencies including the Victorian Equal Opportunity and Human Rights Commission, the Australian Human Rights Commission, the Fair Work Commission and WorkSafe Victoria.

14. Record management

All documentation in relation to complaints of discrimination, harassment and bullying, whether dealt with informally or formally, must be stored in accordance with the following protocol:

- central, secure and confidential file by the Principal
- accessed, if required, on a strictly 'needs' basis (for example, in relation to further complaints or evidence in any subsequent legal proceedings), and
- destroyed after a period seven years following the end of employment at the discretion of the Principal.

15. Contact Officers

The School has trained the following persons as Contact Officers: Cathy Kaiserman

A Contact Officer is not appointed to help write a complaint or to resolve a complaint. A Contact Officer is appointed to provide information about the avenues available for addressing a complaint and to provide support to a person who feels discriminated against, harassed or bullied.

In lieu of speaking with a Contact Officer, an employee may discuss a complaint with the Principal or Head of School/Business Manager.

16. Other relevant School policies and documents

This policy should be read in conjunction with other relevant policies and documents, including:

- The King David School Code of Conduct
- Professional Boundaries Staff:Students
- The King David School Teachers Manual
- The King David School Flexible Working Policy
- The King David School Agreement 2023-2025
- The King David School Electronic Communications Policy
- The King David School Social Media Policy

Employees who are teachers are referred to the Victorian Institute of Teaching Code of Conduct for information about their obligations as members of the teaching profession.

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