

## SEXUAL ASSAULT AND SEXUAL HARASSMENT (STUDENTS) POLICY

### Section 1 - Purpose and Scope

#### Purpose

(1) This Policy sets out:

- a. the College's response to reports of sexual assault and sexual harassment by students; and
- b. the supports available to students who are the victim of sexual assault and sexual harassment.

#### Scope

(2) This Policy applies to reports of:

- a. sexual assault and sexual harassment made about the conduct of students; and
- b. where the conduct of the subject of the report occurred:
  - i. on an ACPE campus;
  - ii. on a digital platform used for College purposes;
  - iii. while representing ACPE; or
  - iv. in relation to a class, function, or event sanctioned or organised by ACPE.

(3) Complaints about staff members are dealt with under the Equal Employment Opportunity (EEO), Discrimination, Harassment and Workplace Bullying Policy and Staff Code of Conduct.

### Section 2 - Definitions

(4) In this Policy:

- a. **ACPE or College** means ACPE Ltd operating under the name Australian College of Physical Education.
- b. **Alleged offender** means a student about whom a report of sexual assault or sexual harassment has been made.
- c. **Complainant** means any person who reports an incident of sexual assault or sexual harassment by a student.
- d. **Complaint** means the formal written report of sexual assault or sexual harassment where the individual is seeking an investigation pursuant to this Policy.
- e. **Consent** means freely and voluntarily agreeing to sexual activity. It also means taking responsibility to ensure that the other person is comfortable and agrees to, and is legally capable of agreeing to, engaging in the sexual activity.

Note that the College is guided by Australian state and federal law as the relevant standard for this Policy.

- f. **Disclosure** means the telling to another person about the sexual assault or sexual harassment.
- g. **Incident** means any incident or behaviour giving rise to an allegation of sexual assault or sexual harassment.
- h. **Report** means a disclosure or formal complaint about sexual assault or sexual harassment lodged by a complainant or any person.
- i. **Sexual assault** means the conduct described at clause 8.

Note that the College is guided by Australian state and federal law as the relevant standard for this Policy.

- j. **Sexual harassment** means the conduct described at clauses 9 – 10.  
Note that the College is guided by Australian state and federal law as the relevant standard for this Policy.
- k. **Staff** means an employee of ACPE, including a casual employee.
- l. **Student** means a person who has active enrolment status in a course at the College, or a person who was actively enrolled at the time the incident the subject of the report occurred.
- m. **Victim** means a person who has been subject to sexual assault or sexual harassment. These incidents may have occurred within or outside the scope of this Policy.

### Section 3 - Policy Statement

(5) The College:

- a. is committed to providing a safe and inclusive environment where students are able to participate freely in College activities; and
- b. will deal with behaviour that compromises students' and other persons' safety or wellbeing as misconduct.

(6) The College will not tolerate sexual assault or sexual harassment in any form. This includes:

- a. incidents that are facilitated by technology or involve image-based abuse;
- b. attempted sexual assault or sexual harassment; or
- c. incidents that may be construed as intimidating, abusive, disrespectful or threatening.

(7) Sexual assault and sexual harassment may be experienced or perpetrated by individuals of all genders and sexualities.

- (8) Sexual assault refers to a range of unacceptable sexual and physical incidents or behaviours that are criminal offences. This includes conduct that a person has not expressly consented to, or is unable to freely or legally able to consent to.
- (9) Sexual harassment:
- includes any unwelcome conduct of a sexual nature that is offensive, humiliating, intimidating or threatening and can include a single incident; and
  - is unlawful under the Sex Discrimination Act 1984 (Cth) and the Anti-Discrimination Act 1977 (NSW).
- (10) Some forms of sexual harassment are also criminal offences. This may include matters involving:
- sexual assault;
  - physical molestation or assault;
  - indecent exposure;
  - stalking; and
  - obscene communication.

### **College Responsibilities**

- (11) The College will:
- provide a process to report and investigate incidents;
  - provide evidence-based and person-centred support services for complainants, including ensuring:
    - the availability of appropriate academic and non-academic support; and
    - timely and accurate information is given throughout the process;
  - support complainants where they choose to report incidents to the Police or other external agencies;
  - ensure procedural fairness for all parties during the investigation process and when imposing sanctions; and
  - ensure staff are aware of their obligations under the Staff Code of Conduct and this Policy.

### **Student Responsibilities**

- (12) Students:
- must adhere to the Student Code of Conduct, the ACPE Values and respect the College's requirements about appropriate behaviour;
  - must undertake any mandatory education and training programs; and
  - are encouraged to report incidents of concern of which they are aware of (see also clause 14).

### **Reporting of incidents**

- (13) A complainant may choose to report incidents to the College, by making a disclosure and / or a formal complaint.

(14) The College:

- a. will accept anonymous reports; and
- b. will accept reports made by a person who has witnessed or has a reasonable belief that a person has been a victim of an incident; and
- c. may progress these reports at a later stage as a formal complaint at the request of the victim.

### **The investigation process**

(15) Where a complainant has made a formal complaint in writing with the intention to instigate a formal investigation, the College will undertake its investigation in accordance with the Student Misconduct (Non-Academic) Policy and Procedure.

Note: The College's process is not a substitute for a criminal process. The College cannot determine whether a criminal act has been committed.

(16) If the College is aware that the incident has been reported to the Police or other external body, the College may defer its investigation until such time it is advised that the external process is complete, not continuing or would otherwise not compromise the external processes. The College may take actions to provide a safe environment as an interim measure, without judging any matter sent for review to an external body.

(17) The College's standard of proof is whether the allegation has been fully or partly substantiated 'on the balance of probabilities'; that is, that on the evidence, the matter is more likely to have occurred than not.

### **Right to inform**

(18) The College supports the rights of complainants to decide whether they want to report, at any time:

- a. to the College;
- b. to the Police or other authorities; and/or
- c. the NSW Anti-Discrimination Board or the Australian Human Rights Commission to make a complaint under anti-discrimination legislation.

Note: In circumstances where the College witnesses or is aware/notified of an indictable incident, mandatory reporting is required.

### **Seeking support**

(19) Students who are victims of sexual assault and sexual harassment, including matters that fall outside the scope of this Policy, are entitled to access the academic and non-academic support offered by the College.

(20) Staff members may seek support pursuant to the Equal Employment Opportunity (EEO), Discrimination, Harassment and Workplace Bullying Policy – Staff.

### **Vexatious allegations and victimisation**

- (21) Students or staff must not make vexatious allegations, being allegations:
- without merit; or
  - where the substance of the complaint has already been considered by the College; or
  - based on dishonest or contains intentionally misleading information; or
  - pursued with undue persistence.
- (22) The College will not tolerate victimisation, or threatened victimisation of individuals involved in reported incidents, those supporting individuals involved or those providing information about a report of sexual assault and sexual harassment.

### **Privacy and confidentiality**

- (23) Staff who receive information and investigate reports will keep appropriate and confidential records in accordance with the Privacy Policy.
- (24) The privacy and confidentiality of all parties to a report will be respected to the extent that it is appropriate. However, disclosure of the information may be required for the purposes of monitoring, investigation and/or to satisfy regulatory and legal obligations.
- (25) Students and staff involved in any report or investigation:
- must only share information with a third party for the purposes of seeking specific support or advice; and
  - must not recklessly or maliciously share information to a third party including via social media.

### **Breach of Policy**

- (26) The College may take disciplinary action against any person who breaches this Policy:
- where the person is a student, this may include disciplinary action under the Student Misconduct (Non-academic) Policy; and
  - where the person is a staff member, this may include disciplinary action under the Staff Code of Conduct.

## **Section 4 - Procedures**

- (27) See Responding to Sexual Assault and Sexual Harassment (Students) – Procedure

## **Section 5 – Guideline**

- (28) Nil.

## Related documents

This Policy should be read in conjunction with but is not limited to:

- Responding to Sexual Assault and Sexual Harassment –(Students) - Procedure
- Student Code of Conduct
- Staff Code of Conduct
- ACPE Values Statement
- Student Misconduct (Non-Academic) Policy and Procedure
- Grievance Complaints and Appeals Policy
- Privacy Policy

### Legislation:

- [Sex Discrimination Act 1984 \(Cth\)](#)
- [Anti-Discrimination Act of 1977 \(NSW\)](#).
- Privacy Act of 1988 (Cth) (including Schedule 1 - Australian Privacy Principles)
- Education Services for Overseas Students Act (2000) (Cth) (and the National Code of Practice for Providers of Education and Training to Overseas Students 2018 made under that Act)
- Tertiary Education Quality and Standards Agency Act (2011) (Cth) (and the Higher Education Standards Framework (Threshold Standards) 2015 made under that Act)
- Work Health and Safety Act (2011) (NSW) (and the Workplace Health and Safety Regulations 2011 (NSW) made under that Act) Employees Liability Act (1991) (NSW)
- Human Rights and Equal Opportunity Commission Act (1986) (Cth)
- SafeWork NSW

## Document Administration

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# Unless otherwise indicated, this Policy will apply beyond the Review date