

Discrimination, Bullying, Harassment and Sexual Misconduct Policy

1. PURPOSE

The purpose of this policy is to ensure that JMC Academy remains committed to actively fostering an inclusive culture that is free from discrimination, bullying and/or harassment of any kind, including sexual misconduct. JMC Academy expects all its staff and students to constructively contribute to a creative, safe and diverse learning environment where discrimination, bullying, harassment and sexual misconduct will not be tolerated under any circumstances.

2. SCOPE

This policy applies to all staff members, teaching faculty, students and contractors engaged or appointed by JMC Academy while on campus or in a JMC related off-campus activity, including managed digital environments.

All staff and students have a responsibility to ensure that JMC Academy is a productive, safe and equitable environment where practices that lead to, support or condone harassment are avoided.

3. DEFINITIONS

Discrimination and Harassment

Discrimination and harassment occur when a person is discriminated against or harassed in certain areas of public life because of a real or perceived difference, as defined under the Racial Discrimination Act 1975 (Cth), the Sex Discrimination Act 1984 (Cth), and/or as defined under the Disability Discrimination Act 1992 (Cth). It is any type of behaviour, explicit or implicit, verbal or non-verbal that is unwelcome, offensive, abusive, belittling or threatening.

Sexual Misconduct

Sexual Misconduct refers to sexual harassment or sexual assault and includes behaviour that could amount to a sexual offence and/or sexual harassment.

Sexual Harassment and Sexual Assault

Sexual harassment is when a person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person or engages in any other unwelcome conduct of a sexual nature with another person. Sexual assault can be a violent, unexpected, traumatic and sometimes life-threatening event or series of events. Sexual assault is ANY unwanted sexual act or behaviour which is threatening, violent, forced or coercive and to which a person has not given consent or was not able to give consent. A person's consent to engage in a sexual activity of any kind cannot be assumed; consent given under duress is not consent, and consent can be withdrawn at any point if it had previously been given.

Consent

Consent is an agreement freely and voluntarily given by someone with the cognitive capacity to do so. A person is not regarded as having freely agreed to or consented to a sexual act just because they did not protest, physically resist or sustain an injury.

Consent is not freely and voluntarily given if a person is:

- Intimidated, coerced or threatened,
- Forced,
- Asleep or unconscious,
- Significantly intoxicated or affected by drugs,

- Unlawfully detained or held against their will,
- There is abuse of power or a position of trust,
- In fear of bodily harm,
- Under a mistaken belief that the offender was their sexual partner.

Bullying

Bullying is when people repeatedly and intentionally use words or actions against someone or a group of people to cause distress and risk to their wellbeing. These actions are usually done by people who have more influence or power over someone else, or who want to make someone else feel less powerful or helpless. Bullying can take a number of forms, including online and other electronic means. It is not bullying when there is only one incident of unreasonable behaviour or includes reasonable action in the course of management of the organisation. However, single, or one-off incidences of misconduct cannot be ignored as they may also be a risk to personal health and safety.

Vilification

Vilification is a form of unlawful discrimination which is a public act or expression that incites hatred against, contempt for, revulsion or severe ridicule of an individual or group on the basis of their personal attributes including race, colour, nationality, descent or ancestry, ethnic-religious origin, national origin, sexuality, transgender status and/or HIV/AIDS status.

Legal Obligations

Under the Racial Discrimination Act 1975, the Sex Discrimination Act 1984 and the Disability Discrimination Act 1992 vicarious liability is also attached to JMC Pty Limited as the employer. This means JMC Pty Limited can be penalised for not taking all reasonable practical steps to prevent a staff member from doing an unlawful act, as described by the legislation and therefore breaching their duty of care.

Criminal Proceedings

Some forms of harassment may be criminal offences. Grabbing or striking may constitute assault. Actual or attempted assault, including indecent assault, is a criminal offence. Sending obscene items through the mail or an electronic device and making nuisance phone calls can also be criminal offences.

Should such an incident or incidents be reported, then JMC Academy management will contact the police for advice and assistance on the appropriate action to take.

For definitions not listed here please refer to *JMC Academy Glossary*.

4. POLICY

Discrimination, bullying, harassment and sexual misconduct may adversely impact a person's health and wellbeing as well as their right to educational opportunities at JMC Academy.

Not only is it unkind and unfair, it is against the law for anyone to harass another person or to unlawfully discriminate against another person in the workplace, either directly or indirectly, on the basis of a real or perceived difference in relation to:

- Age
- Gender, gender identity, sexuality, sexual orientation
- Mental health
- Religious or political belief or activity
- Colour, race, nationality, descent or ancestry and ethno-religious or national origin
- Marital relationship or domestic status

- Pregnancy, childbirth and breastfeeding
- Disability (which includes physical, intellectual, psychiatric or psychological, learning or cognitive disabilities, and any virus or bacteria that can cause disease, such as HIV. It also includes any disability a person had in the past, has now, or may have in the future).

JMC Academy will take all reasonable steps to eliminate such behaviour through the use of an educative approach on the prevention of discrimination, bullying, harassment and sexual misconduct, ensuring that all students know their rights and responsibilities in an environment that encourages people to speak out.

JMC Academy:

- Sets standards of acceptable behaviour for JMC Academy students, contractors, visitors and employees,
- Actively works towards sustaining a learning environment free from discrimination, bullying, harassment and/or sexual misconduct,
- Assesses and accepts enrolments based on the applicant's demonstrated capacity to successfully undertake the course of their choice,
- Makes reasonable adjustments to campus facilities and curriculum to accommodate a student's specific, identified requirements for learning,
- Deals effectively with conflict arising from reported incidents of discrimination, bullying, harassment and sexual misconduct,
- Provides academic and counselling services, as a matter of course, to support students to successfully complete their studies.

All JMC Academy students and employees:

- Can expect to work and study in a safe and healthy environment free of discrimination, bullying, harassment and sexual misconduct,
- Are not to misuse this policy by making vexatious (trouble-making and dishonest) accusations of discrimination, bullying, harassment and sexual misconduct,
- Are not to engage in or promote bullying, harassing or discriminatory behaviour to others,
- Need to follow any reasonable instruction to cease any bullying, sexual misconduct, harassing or discriminating behaviour,
- Can report any incident of bullying, harassing, sexual misconduct or discriminatory behaviour they are subject to, and/or witness, and can expect not to be victimised for making the report,
- Can expect their reporting, the subsequent process of investigating and resolving the matter to be treated with utmost confidentiality.

4.1 PREVENTING DISCRIMINATION, BULLYING, HARASSMENT AND SEXUAL MISCONDUCT

The main elements of JMC Academy's prevention strategy are:

- The provision of information and training regarding JMC Academy's Discrimination, Bullying, Harassment and Sexual Misconduct Policy to staff and students, and
- Effective procedures to report and then deal with reports of discrimination, bullying, harassment and/or sexual misconduct.

The related procedures include guidance on how to:

- Report an incident of discrimination, bullying, harassment and/or sexual misconduct,
- Investigate the report,
- Decide which of the available actions to take to resolve the matter,
- Support any victims of discrimination, bullying, harassment and/or sexual misconduct through, the reporting and resolving process, and after if need be:

- Select an appropriate penalty from those available,
- Appeal against a decision made in relation to the incident—whether the victim or the victimiser,
- Proceed with any recommendations for change to any of JMC Academy’s policies or procedures.

4.2 SPEAKING OUT

JMC Academy advocates that people speak out when they are a victim of, or a witness to, any act of discrimination, bullying, harassment and sexual misconduct. An assertive and critical response means the victims can better appreciate they are not alone in dealing with the matter, and nor are the victimisers left with the impression that their behaviour is acceptable.

4.3 REPORTING PROTOCOLS

JMC Academy has different procedures for managing incidents for bullying, discrimination, harassment and sexual misconduct.

The key difference in these procedures is that with regards to sexual misconduct JMC Academy does not have an expectation that the person who is subject to sexual harassment or sexual assault needs to address the behaviour directly with the person who has harassed or assaulted them. Rather, JMC Academy will address this behaviour through a manager, supervisor, academic staff, Campus Manager or other appropriate person.

Any student or employee who is a victim of, or witnesses an incident of discrimination, bullying, harassment and/or sexual misconduct is advised to follow the relevant JMC Academy procedure.

For bullying, discrimination and harassment:

- Student Complaints and Appeals Procedure.

For Sexual Misconduct:

- Sexual Harassment Procedure,
- Sexual Assault Procedure.

4.4 RESPONSIBILITIES OF MANAGEMENT AND EMPLOYEES

Senior members of JMC Academy are responsible for:

- Ensuring their own conduct is above reproach,
- Ensuring employees, students and guests comply with JMC Academy’s expectations regarding conduct in the organisation,
- Ensuring all students are aware of the Student Code of Conduct,
- Explaining JMC Academy’s policy on discrimination, bullying, harassment and sexual misconduct and its implications,
- Dealing promptly with any incidents of discrimination, bullying, harassment and sexual misconduct, if possible, before a formal report needs to be made,
- Taking action to resolve a reported incident of discrimination, bullying, harassment and sexual misconduct,
- Promptly addressing any systemic issues that may underlie a report of discrimination, bullying, harassment and sexual misconduct,
- Maintaining confidentiality throughout the reporting and resolving process.

All members of JMC's community have a fundamental responsibility for their own conduct. As well as an act of discrimination, bullying, harassment and/or sexual misconduct being unacceptable behaviour, such actions could constitute a breach of relevant legislation that may require further legal action. Work health and safety legislation imposes an obligation on all staff and students to take reasonable care of their own health and safety and to ensure that their acts or omissions do not adversely affect the health and safety of others. There is also an expectation of co-operation with JMC Academy to the extent necessary to enable a proper duty of care to be met.

4.5 EXAMPLES OF UNACCEPTABLE BEHAVIOUR

JMC Academy accepts that it is a person's right to claim they have, or have not, been the victim of discrimination, bullying, harassment and/or sexual misconduct and they have a right to describe their experience of unwelcome behaviour as being discrimination, bullying, harassment and/or sexual misconduct in their reporting. Therefore, the following list of examples of unacceptable behaviour is indicative rather than exhaustive:

- Forcing someone to do something so they can be 'accepted' into a group,
- Consistently undermining efforts by failing to give credit and emphasising mistakes,
- Deliberately excluding a person from work, projects and/or social engagements,
- Targeting a person, or a group of people, in an abusive manner in a creative work,
- Failing to equitably share resources, or preventing access to opportunities,
- Shouting, threatening or any form of verbal and/or physical abuse,
- Inflicting bodily harm, which includes but is not limited to physical and/or sexual assault,
- Sexually harassing someone,
- Singling out another person, or group of people, for unwanted, negative attention that causes distress, embarrassment, injury or other substantial discomfort,
- Stalking; obsessively and repeatedly harassing or threatening a person by, for example, following them as they go about their daily business and/or following them online,
- Vandalism (of any kind) and especially that which victimises a person or group of people,
- Dismissive treatment or material expressing prejudice or stereotypical assumptions about the group to which a person may belong,
- Behaviour that may or may not be intended to hurt another person, but does cause hurt and/or offence,
- Practical jokes that make the perceived or real difference of a person the subject of the joke or prank,
- Making a nuisance of oneself by the consistent and deliberate disruption of a person, a class, a recording or a performance.

4.6 WHEN IS IT NOT BULLYING OR HARASSMENT?

Students

Harassment can't be confused with legitimate comment and advice (including relevant negative comment or feedback) from lecturers and/or assessors on academic or other related student performance. Feedback on an assessment task or other related activity is different from harassment because feedback is intended to assist students to improve the standard of their academic or other related activity.

JMC Academy staff

Similarly, harassment can't be confused with legitimate comment and advice (including relevant negative comment or feedback) from managers and supervisors on the work performance or work-related behaviour of an individual or group. Feedback on work performance or work-related behaviour is different from harassment because feedback is intended to assist staff to improve work performance or the standard of their behaviour.

5. COMPLAINTS and APPEALS

Students may access the Student Complaints and Appeals Policy and its associated procedures to appeal against any decisions made under this policy.

6. POSITIONS RESPONSIBLE FOR IMPLEMENTING POLICY

- Governing Council
- Academic Board
- Chief Executive Officer
- Director of Education
- Director of International Service
- Campus Manager
- Administration
- JMC Academy Students
- JMC Academy Staff

7. RELATED DOCUMENTS

- Diversity Equity and Inclusion Policy
- Student Complaints and Appeals Policy
- Student Complaints and Appeals Procedure
- Sexual Misconduct Report Form
- Personal Information and Privacy Policy
- Sexual Harassment Procedure
- Sexual Assault Procedure
- JMC Academy Glossary

8. REATED LEGISLATION

This Policy supports JMC Academy's compliance with the following legislation:

- Higher Education Support Act 2003 (Cth),
- Higher Education Standards Framework (Threshold Standards) 2015,
- Education Services for Overseas Students (ESOS) Act 2000 (Cth),
- National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2018
 - ESOS National Code 2018, Standard 6.
- Commonwealth
 - Age Discrimination Act 2004 (Cth)
 - Disability Discrimination Act 1992 (Cth)
 - Fair Work Act 2009 (Cth)
 - Racial Discrimination Act 1975 (Cth)
 - Sex Discrimination Act 1984 (Cth)
- Key Victorian Legislation
 - Occupational Health and Safety Act 2004, and
 - Occupational Health and Safety Regulations 2007
 - Victorian Equal Opportunity Act 2010
- Key New South Wales Legislation
 - Work Health and Safety Act 2011
 - Work Health and Safety Regulation 2011
- Key Queensland Legislation
 - Work Health and Safety Act 2011
 - Work Health and Safety Regulation 2011

- Prevention of Workplace Harassment Code of Practice 2004
- Anti-discrimination Act 1991

9. POLICY REVIEW DATE

28th September, 2021

10. VERSION CONTROL TABLE

Title	<i>Discrimination, Bullying, Harassment and Sexual Misconduct Policy</i>			
Maintained By	Education Team			
Approving Authority	Governing Council			
Approved Date	11/10/2018			
Version Number	Modified By	Modifications Made	Date Modified	Status
1.0	S. Stanford	Revisited as part of policy and review procedure and as per directions from AB meeting on August 4, 2017. Updated policy to include treatment of bullying; modified language; updated legislation and positions; included reference to new Incident Report Form. Replaces Policy B3.16 Harassment Free Campus.	25/08/2017	Superseded
2.0	G. Markakis	Update the title of the Policy and developed the content.	07/09/2018	Superseded
2.1	M. Hafda	Redesigned the Policy to comply with the updated format.	5/10/2018	Approved by the Governing Council on 11/10/2018 Current

References and Acknowledgments

1. Australian Human Rights Commission, viewed 18/08/2017 at <https://www.humanrights.gov.au/>
2. Berklee College of Music, 2016-2017, Policy Handbook for Students, viewed 18/08/2017 at <https://www.berklee.edu/sites/default/files/PolicyHandbookforStudents.pdf>
3. BullyZero Australia Foundation, viewed at 18/08/2017 at <http://bzaf.org.au/workplace-bullying/>
4. SARC Sexual Assault Resource Centre, viewed 18/08/2017 at http://www.kemh.health.wa.gov.au/services/sarc/what_is.htm
5. TEQSA 2017, Guidance Note: Wellbeing and Safety, viewed 18/08/2017 at
6. http://www.teqsa.gov.au/sites/default/files/GuidanceNote_WellbeingandSafety1.0.pdf