

Sexual Harassment and Sexual Assault Policy

Policy Category	Corporate		
Document Owner	ECA Principal Executive Officer		
Responsible Officer	General Manager –ELICOS		
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References and Legislation	Sexual Discrimination Act 1984 (Cth) Anti-Discrimination Act, 1977 (NSW) Privacy Act 1988 Crimes Act 1900 (NSW) ELICOS Standards 2018 Education Services for Overseas Students Act 2000; Education Services for Overseas Students Regulations 2001 The National Code of Practice for Providers of Education and Training to Overseas Students 2018 (The National Code)		
Related Documents	Student Code of Conduct Critical Incident Policy Overseas Student Support Services Policy and Procedures Complaints and Appeals Policy and Procedures		
Version	Change description	Approved	Effective Date
1.0	New Policy	Principal Executive Officer 16/11/2020	16/11/2020

1. Purpose

Sexual harassment and sexual assault are unacceptable. The purpose of this Policy is to foster a safe and healthy learning and working environment that is free from sexual harassment and sexual assault.

This Policy defines and gives examples of, behaviours that constitute sexual harassment and sexual assault affirms the College's intolerance of sexual harassment and sexual assault and confirms its commitment to confidentiality and respect for privacy for victims of sexual harassment and sexual assault.

2. Scope

This Policy applies to all students, staff and contractors at ELSIS. This policy covers all ELSIS locations, including campuses and the online environment. Coverage applies to all ELSIS events, functions, staff activities, student activities and all external locations that staff and students may attend, which may be related to their study or work purposes.

Coverage also applies to all communications in any form whether face to face, by phone, email or any other form of technology.

This document should be read in conjunction with other related policies (see Related Documents).

3. Definitions

Item	Definition
<i>Consent and consensual</i>	In the context of sexual relations and this policy means that: <ul style="list-style-type: none"> • No one is pressuring the person; • No one is forcing the person; • No one is threatening the person or threatening someone or something the person feels deeply about; • The person wants to have sex and has not changed their mind; • The person has the ability to stop when the person wants; • The person is 16 years or older; • The person is awake and conscious; • The person is not overly affected by alcohol or drugs; • The person does not have a cognitive impairment that affects the ability to consent
<i>Respondent</i>	The person whose behaviour is the subject of a complaint.

4. Principles

The following principles and practice form the foundation for this Policy.

Safety and Wellbeing

The safety and wellbeing of students, staff, contractors and visitors are of paramount importance to ELSIS.

Compassion and Support

EL SIS' response to a person who has experienced sexual harassment and or sexual assault is one of compassion, empathy and support.

Confidentiality and privacy

EL SIS will treat any disclosure or formal reporting of Sexual Harassment or Sexual Assault with the utmost confidentiality and with respect to the privacy of the student or staff member.

Inclusivity

This Policy applies to all students, staff, contractors and visitors including those who identify as intergender, transgender and gender diverse, LGBTIQ, Aboriginal and Torres Strait Islander, with a disability, culturally and linguistically diverse and international.

EL SIS recognises that students from other countries may have cultural and language proficiency impediments to disclosing or reporting incidents of sexual harassment and sexual assault.

5. Policy

EL SIS is committed to ensuring a safe learning and working environment that is free from sexual harassment and sexual assault and where all members of the school community are treated with dignity, courtesy and respect.

Sexual harassment and sexual assault are unacceptable, will not be tolerated under any circumstances, are prohibited and may be criminal.

Action will be taken against any person who breaches this policy (see the *Disciplinary Action Under This Policy* section below).

All members of the ELSIS community have the right and also a responsibility to maintain a learning and working environment free from sexual harassment and sexual assault and the policy applies to all members including staff, students, contractors in attendance at the school or at a school event, function or activity and through any form of relevant contact or communication. The Policy applies whether the sexual harassment or sexual assault is initiated in person, by telephone, or through electronic technologies such as mobile phone cameras, social networking websites, emails, SMS/MMS communications, through another person, agent or any other means.

The School:

- will provide support for the victim or complainant of sexual harassment and sexual assault
- will protect the health and wellbeing of the complainant by ensuring any acts of victimisation or retaliation are investigated and dealt with in a timely manner.
- will treat any formal complaint or disclosure with sensitivity, confidentiality and in accordance with the Privacy Policy
- will handle complaints fairly and equitably and in accordance with the [Equity and Diversity Policy](#)

The School recognises the right of the person who has experienced sexual harassment or sexual assault to make their own decision about how they wish to progress the matter if appropriate, including whether they wish to proceed to a formal complaint with the school and with the Police, the Australian Human Rights Commission and other bodies identified on [Sexual Harassment and Sexual Assault information page](#) on the website under Student Support Services.

EL SIS will implement training and awareness-raising strategies to ensure that all staff and students know their rights and responsibilities.

Sexual Harassment

Definition

Sexual harassment is any unwelcome sexual behaviour which is likely to offend, humiliate or intimidate. It does not relate to mutual attraction or friendship. The Sexual Discrimination Act 1984 (Cth) defines sexual harassment as when

- (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
- (b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

Examples of sexual harassment include but are not limited to:

- unwelcome physical touching including deliberately brushing up against the other person
- uninvited kisses or embraces
- requests for sex
- staring or leering
- sexually explicit conversation
- suggestive comments or jokes
- unwanted requests to go out on dates, especially after a prior refusal
- intrusive questions about the person's private life or body
- making promises or threats in return for sexual favours
- "flashing" (exposing private parts of the body) or sexual gestures
- sex-based insults, taunts, teasing or name-calling

- touching or interfering with a person's clothing, e.g. lifting up skirts, flicking bra straps
- offensive phone calls or letters
- displaying posters, magazines or screen savers of a sexual nature.
- stalking, sexual insults or taunting
- emailing pornography or rude jokes
- sending sexually explicit texts
- offensive messages through new technologies such as mobile phone cameras, social networking websites, emails or SMS/MMS communications.

Sexual Assault

Definition

Sexual assault is a legal term used to describe a range of sexual offences, from showing indecent images to another person, to kissing or touching them, as well as penetration of the person's body with a body part or object.

If someone does something sexual that makes the person feel uncomfortable or touches the person's body when the person does not want them to, it may be a sexual assault.

'Sexual assault' is often called other names such as:

- Sexual abuse, rape, indecent behaviour, indecent assault, sexual molestation, incest, child sexual abuse, child sexual assault, touching, 'feeling up', sexual harassment.

If someone does something to make the person feel that the person has been assaulted, the person can seek help from counselling services, including sexual assault services. The College lists several of these services and their contact details on the [Sexual Harassment and Sexual Assault information page](#). This also applies when the person does not want to report to the police, or if the person has reported to the police, but they do not believe that a crime has been committed.

If the person is not sure whether they have been sexually assaulted or not, the person can contact a sexual assault service referred to above. There are specially trained people who can help the person understand what has happened and identify and clarify the person's options.

Some people blame victims or make victims feel that they somehow asked to be sexually assaulted because of how they looked or dressed, or where they were at the time. This is not the case. It is never a victim's fault. Sexual assault is always a crime.

For definitions and examples of sexual assault:

https://www.victimsservices.justice.nsw.gov.au/sexualassault/Pages/sexual_assault_victims.aspx

and

<https://www.wlsnsw.org.au/resources/sexual-assault/what-is-sexual-assault/>

What Sexual Harassment is not

Sexual harassment is not behaviour which is based on mutual attraction, friendship or respect. If interaction is consensual, welcome and reciprocated, it is not sexual harassment. Behaviour can become sexual harassment if the interaction changes from being based on mutual attraction, friendship or respect to non-consensual, unwelcomed and unreciprocated interactions.

When Sexual Harassment is a Criminal Offence

Sexual harassment that is also an offence under criminal law may be referred to the police this includes matters involving:

- sexual assault
- physical molestation or assault
- indecent exposure
- stalking
- obscene communications

Disclosing and reporting

ELSIS supports the right of students and staff who have experienced sexual harassment or sexual assault to decide whether they want to report the incident to the police.

Referral of a case to the police does not preclude the school from dealing with the matter through internal complaints procedures.

Students may decide to disclose the incident or incidents of sexual harassment and sexual assault but decide not to report formally. Disclosure would generally occur to the counsellor or to the identified staff members assigned to support students or staff who have experienced sexual harassment or sexual assault.

Students may decide to disclose the incident or incidents of sexual harassment and sexual assault but and then decide to report formally.

Students may decide to report the incident formally. If the incident is reported as a complaint to the school, the incident will be investigated.

No victimisation

The safety and wellbeing of the student or staff disclosing or formally reporting sexual harassment or sexual assault is of paramount concern to the school. The person who has experienced sexual harassment or sexual assault will be treated with respect and not be further victimised in any way.

False complaints

Students must not make knowingly false complaints or disclosures in relation to claims of sexual misconduct.

Investigation

All parties to an investigation will be afforded procedural fairness and have the right to have a support individual with them.

ELSIS Director of Studies (DoS) will investigate an allegation of sexual harassment or sexual assault where the respondent is a student. ELSIS DoS will prepare a report based on the investigation. The report is presented to ELSIS General Manager. ELSIS DoS will consider if a student respondent should be suspended during an investigation and any determination of formal reprimand, suspension or exclusion.

Where the respondent is a member of staff or contractor, the investigation will be referred to the ECA Human Resources team: People, Engagement and Culture ECA. ELSIS Management will consider and determine the suspension of a member of staff or contractor respondent during an investigation or termination. These decisions will be made in accordance with the relevant employment agreement or contract.

Disciplinary action under this policy

The school will take disciplinary action against any person whether student, staff or contractor who is in breach of this policy.

Penalties for staff, students and contractors found to have engaged in sexual harassment will vary depending on the nature of the harassment but may include:

- for staff – a directed apology, formal reprimand, counselling, demotion or dismissal
- for students – a official reprimand, suspension or exclusion
- for affiliates – a formal reprimand, or termination of engagement

For sexual assault

- for staff – dismissal
- for students – exclusion
- for affiliates – termination of engagement

This does not preclude any action taken by police or other bodies such as the Australian Human Rights Commission.

Record keeping and reporting

The Director of Studies will keep records of all complaints of sexual harassment and sexual assault, ensuring confidentiality and privacy.

When reporting cases to identify problems and develop responses, all personal information will be de-identified.

Only staff that need to access or process information will be allowed access to complaints and disclosures of sexual harassment or sexual assault.

Appeals

Decisions or determinations under this Policy can be appealed using the Grievances and Appeals Policy and Procedure.