



Founded 1922

**HERSCHEL
GIRLS SCHOOL**

2021

**ANTI-DISCRIMINATION POLICY AND
PROCEDURES**

1. PREAMBLE

Herschel is an independent, Anglican school with a mission to deliver 'all-round' educational excellence within the context of Christian belief and practice, in ways that contribute meaningfully to the transformation of South Africa's society. Herschel fully recognises that:

- the Bill of Rights in South Africa's Constitution¹ enshrines the human rights of all people and affirms the democratic values of human dignity, equality and freedom;
- the Bill of Rights also prohibits unfair discrimination on grounds that include race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth;
- it has a responsibility to play its role in upholding the Bill of Rights and in the process of redressing the inequalities in society and the marginalisation that some people could experience within its own school community.

The School reiterates its commitment to create an inclusive, diverse and cosmopolitan community in which all staff and pupils are free to pursue excellence and satisfaction in their academic and occupational endeavours without fear of bullying, harassment, victimisation or vilification. To this end, Herschel undertakes to:

- 1.1 promote equality and equal opportunity at² the School consistent with the Constitution, the Employment Equity Act (EEA)³ and the Promotion of Equality and Prevention of Unfair Discrimination Act ; and
- 1.2 take appropriate action against those who unfairly discriminate against staff, pupils or members of the School community, where applicable in accordance with the provisions of relevant school policies, including but not limited to Herschel's Transformation and Diversity Policy, its HIV & AIDS Policy, its Harassment Policy and Procedures and where applicable its disciplinary codes and procedures.
- 1.3 timeously address all occurrences of unfair discrimination in order to create a safe and enabling school environment;
- 1.4 educate all members of our community to be understanding and aware of the impact of their thoughts and actions;
- 1.5 establish a structure, representative of all sectors of the Herschel community and accountable to Council to oversee all transformation, diversity and inclusion initiatives designed to redress past and present unfair discrimination and safeguard against future unfair discrimination.

¹ The Constitution of the Republic of South Africa, Act 108 of 1996

² Act 55 of 1998, as amended.

³ Act 4 of 2000

2. APPLICATION OF THE POLICY

This policy and these procedures apply to all staff and pupils of the School, and other stakeholders who are present at the School, including:

- 2.1 Council members
- 2.2 employees / staff (whether they are fixed-term, full-time or part-time) at all levels;
- 2.3 pupils;
- 2.4 members of the Old Herschelian Association;
- 2.5 representatives of the Anglican Church;
- 2.6 parents, guardians and families of pupils; and
- 2.7 independent contractors/service providers and other visitors while on any of the campuses of the School.

3. OBJECTIVES OF THE POLICY

The objectives of this policy and the procedures detailed herein, are:

- 3.1 to eliminate unfair discrimination at the School including but not limited to unfair discrimination based on race, colour, gender, sex, sexual orientation, ethnic or social origin, birth, culture, language, disability, religion, conscience and belief.
- 3.2 to clarify the procedure, the responsibilities and the obligations of all to promote equality and equal opportunity in the School.
- 3.3 to establish appropriate and accessible interventions for staff and pupils to address allegations of unfair discrimination.
- 3.4 to ensure that complainants do not feel that their grievances are ignored or trivialized, and that they will not suffer any retaliation or victimization.

Annexure A hereto sets out some examples of forms of conduct that can amount to unfair discrimination.

4. RESPONSIBILITIES

- 4.1 **The School community** is expected to take collective and individual responsibility to ensure adherence to the principles, procedures and measures set out in this policy.
- 4.2 **Employees of the School** are expected to participate in diversity, inclusivity transformation and/or anti-discrimination training, as and when required by the School on the commencement of and/or at other times during their employment, with a view to enhancing their understanding of and compliance with this policy and matters relevant thereto.

4.3 School managers and staff with supervisory and line-management responsibilities are expected:

- to monitor the working environment to ensure that acceptable standards of anti-discrimination conduct are observed at all times and, when managers observe a risk of unfair discrimination in the workplace, they are expected to take the necessary steps to ensure that it is appropriately dealt with; failure to do so may lead to disciplinary action being taken against them;
- to demonstrate and project appropriate anti-discrimination behaviour, including ensuring that they do not engage in conduct that amounts to unfair discrimination or which is a breach of this policy and the procedures set out herein;
- to ensure employees, pupils and other relevant persons understand this policy and the procedures set out herein.
- to ensure that complaints of unfair harassment (including but not limited to racial or sexual harassment) are treated confidentially, in accordance with this policy and within appropriate channels of communication.

4.4 All employees and pupils of Herschel are expected:

- to ensure that they do not engage in any unfair discriminatory behaviour or practices or breach this policy;
- to report any incidences of unfair discrimination;
- to offer support to anyone who is being unfairly discriminated against and direct them to sources of help and advice; and
- to maintain complete confidentiality of information and cooperate during the investigation of any complaint of unfair discrimination.

4.5 No person who, in good faith, reports an incident of alleged unfair discrimination or a breach of this policy may be subjected to victimisation or retaliation for having made such a report and any such victimisation or retaliation shall be regarded as a serious breach of this policy. Conversely, no person should maliciously and in bad faith make false allegations of unfair discrimination and such conduct shall equally be regarded as a serious breach of this policy.

5. PROCEDURES FOR REPORTING AND DEALING WITH ALLEGED UNFAIR DISCRIMINATION AND BREACHES OF THIS POLICY:

5.1 To whom should incidents of alleged unfair discrimination be reported?

- 5.1.1 Reports of incidences of alleged unfair discrimination or breaches of this policy involving **staff** should be made both to the relevant Head of School (e.g. to the Head of the Prep School where Prep School staff are involved) and to the Chair of Council who shall report it to the Human Resources Manager in writing. If the allegation relates to the School's Human Resources Manager, the report should be made both to the Head of School and to the Chair of Council, who shall report it to the Chair of the Human Resources Committee of the Council in writing.
- 5.1.2 Reports of incidences of alleged unfair discrimination or breaches of this policy involving **pupils** should be made to the relevant Head of School/school counsellor/teacher via stopracism@herschel.org.za,
OR
to a school counsellor or teacher either verbally or in writing on the online Discrimination Complaint Form (Annexure B).
- 5.1.3 Reports of incidences of alleged unfair discrimination or breaches of this policy involving **parents** should generally be submitted to the relevant Head of School in writing.
- 5.1.4 Reports of incidences involving **service providers/independent contractors** should be submitted to the Business Manager: Operations in writing.
- 5.1.5 Mediation and other informal procedures for resolving reports of alleged breaches of this policy or conduct that amounts to unfair discrimination may be employed by the School in appropriate cases but breaches of this policy or conduct that amounts to unfair discrimination:
- 5.1.5.1 by an employee or learner of the School may also result in formal disciplinary proceedings, the procedures for which can be found in the School's Codes of Conduct and Disciplinary Procedures.
- 5.1.5.2 by persons who are not employees or pupils of the School (e.g. parents, independent contractors/service providers, visitors, etc.) may also be dealt with formally in accordance with the applicable contractual or other rights and obligations in place with the party in question.
- 5.1.6 If the person reporting an incident or alleged breach is dissatisfied with the manner in which the report has been dealt with, they may refer the matter to the Chair of the Council and/or the Chair of the Transformation, Equity and Belonging Committee of the Council (TEB Committee).

6. INFORMAL PROCESS

- 6.1 Informal interventions may include one or more of the following:
- 6.1.1 With the consent of the complainant, an appropriate person assigned by the Chair of the TEB Committee, may approach the respondent/s to explain the context and nature of the complaint. The identity of the complainant may or may not be disclosed to the respondent, depending on the wishes of the complainant.
- 6.1.2 Where the respondent acknowledges responsibility for their conduct, a process may be facilitated whereby the respondent engages in remediation / education/ facilitation / conscious conversations / counselling and guidance.

- 6.1.3 The terms, conditions and acceptance of such processes will be determined and agreed on in a manner that is appropriate to the circumstances. In complex instances, the Chair of the TEB Committee may refer the matter to an ad hoc panel of not more than three persons to consider suggestions and discussions, and to make a recommendation(s). This panel will not constitute a disciplinary hearing, nor will its recommendations be binding. The aim of this process would be to achieve a resolution based on agreement. The choice of panellists will be at the discretion of the Chair of the TEB Committee.
- 6.2 The complainant shall retain their right to pursue a formal process. This right will remain intact and available throughout the informal procedure. The complainant's choice to pursue an informal process shall not in any way diminish their original complaint.
- 6.3 The respondent shall have the right to refuse participation in the informal process, and no adverse inference shall be drawn from such refusal in any subsequent procedures.
- 6.4 A written report containing a brief summary and outcome of the informal procedure shall be kept by the Chair of the TEB Committee and shall not be made available except to the relevant Head of School and/or the Chair of Council.
- 6.5 Every endeavour must be made to conduct the informal procedure within 14 days of the complaint being referred.
- 6.6 Confidentiality regarding the process, participants and report will be maintained throughout this process or any other process that may have ensued as a result of the informal process.
- 6.7 No part of the informal procedure, whether verbal or written, may be adduced as evidence in a subsequent hearing.
- 6.8 At the end of the informal process, the Chair of the TEB Committee and/or relevant Head of School should ascertain whether the complainant requires any further advice, counselling or support.

7. FORMAL PROCESS

- 7.1 A complainant may choose to follow a formal process with or without having first followed an informal process. The purpose of formal proceedings is to ensure that appropriate disciplinary action (or other formal action in accordance with the applicable contractual or other rights and obligations in place with the party in question) is taken against any violation of this policy.
- 7.2 If the complainant wishes to proceed with a formal process, they must clearly advise the Chair of the TEB Committee and/or relevant School Head of this, and prepare and sign a written statement providing full particulars of the alleged unfair discrimination.
- 7.3 The School shall take all reasonable steps possible to ensure that all complaints of alleged unfair discrimination, including but not limited to sexual harassment and racism, are considered seriously and dealt with in a manner that is fair, urgent, expeditious and consistent.

- 7.4 A violation of this policy, either through commission or omission, and failure of supervisory or managerial employees to observe and implement its terms, shall be regarded as serious misconduct or, where the person involved is not an employee or pupil of the School, a serious breach of their obligations.
- 7.5 Any person found guilty of unfair discrimination and in particular sexual harassment or racism or racial harassment may be discharged from employment (in the case of a staff member) or expelled from the School (in the case of a pupil). In the case of a third party, the termination of a contract may ensue.
- 7.6 Where the formal procedure is to be followed in respect of pupils, the School will follow the procedures as set out in the School's Code of Conduct and Disciplinary Procedures.
- 7.7 Where the formal procedure is to be followed in respect of employees the existing negotiated or approved disciplinary procedures for staff must be used.
- 7.8 All reasonable options for redressing harm suffered as a result of sexual harassment, racism or racial harassment must be considered by the person(s) presiding over the disciplinary proceedings.

8. THE RIGHT TO PURSUE EXTERNAL PROCESSES

8.1 Employees of the School:

These procedures do not remove the right of an employee of the School to refer an alleged unfair discrimination dispute relating to the employment relationship with the School to the Commission for Conciliation, Mediation and Arbitration (CCMA) (in terms of section 10 of the EEA) or to pursue a complaint externally (where the complaint relates to a third party) in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act. However, in relation to unfair discrimination disputes relating to the employment relationship with the School, employees are expected and required, as envisaged by Section 10(4) of the EEA, to exhaust all available internal mechanisms (e.g. mediation and formal procedures) before resorting to such measures.

8.2 Pupils and other persons who are not School employees:

These procedures also do not remove the right of pupils and other persons who are not School employees to refer alleged unfair discrimination disputes for external dispute resolution in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act or other applicable laws, but they are encouraged first to exhaust all available internal mechanisms (e.g. mediation and formal procedures) before resorting thereto.

9. REVIEW AND ADJUSTMENT OF POLICY AND PROCEDURES

This policy and the procedures herein may be reviewed and adjusted by Herschel from time to time in its discretion and may make such changes to this policy as it deems appropriate in its sole discretion.

ANNEXURES

ANNEXURE A

This Annexure is designed to raise awareness of what *could* constitute unfair discrimination.

1. This section sets out some forms of conduct that unfair discrimination may take. It is not exhaustive of the forms of unfair discrimination conduct but includes the following conduct based on prohibited discriminatory grounds such as race and sex:

- Verbal abuse and threats;
- Written unfair discrimination (e.g. graffiti);
- Provocative behaviour (e.g. wearing unfairly discriminatory badges or insignia);
- Unfair discriminatory comments in the course of discussions;
- Ridicule of an individual's differences;
- Attempts to recruit other individuals into exclusive groups on prohibited grounds;
- Physical assaults;
- Refusal to associate with people because of any aspect of their identity;
- Any distinction, exclusion, limitation or preference made by a person within an authoritative position who uses unfair discrimination grounds to distinguish, exclude, limit or prefer certain persons from being part of sporting codes, education, positions, activities or benefits of any kind meant for any person within the school environment.

2. This section sets out more specific examples of behaviour that can constitute unfair discrimination:

On the grounds of race:

- Dissemination of any propaganda or idea, which propounds the racial superiority or inferiority of any person, including incitement to, or participation in, any form of racial violence;
- Engagement in any activity which is intended to promote, or has the effect of promoting exclusivity, based on race;
- Exclusion of persons of a particular race group under any rule or practice that appears to be legitimate but which is actually aimed at maintaining exclusive control by a particular racial group;
- Inferior treatment of a specific racial group, compared to those from another racial group;

- Denial of access to opportunities, or failing to take steps to reasonably accommodate the needs of such persons;
- Use of derogatory language to undermine a certain racial group;
- Making fun of clothes, food, choice of music or physical appearance of people from a different cultural context than your own;
- Having lower expectations for students of different cultural or racial groups;
- Telling or sharing jokes directed against people from particular racial groups;
- Using insulting language against particular cultural or racial groups;
- Making fun of peoples' accents or names;
- Refusing to work or play with or sit next to other people who are from a different culture or race group or speak a different language;
- Telling people to 'go back where they came from';
- Allocating tasks or classes to teachers or students according to their culture or background;
- Laughing at a racist joke;
- Not reporting racist behaviour;
- Promoting publications online that are opposed to, or insult, others based on race;
- Wearing clothes with slogans that would offend any racial group;
- Suggesting that a member of a particular race group only got to where they are because of their race.
- Calling black people 'articulate' as if it is unusual in a black person;
- Equating the presence of black people with a lack of safety;
- Saying that you don't see colour;

On the grounds of sex or gender:

- Gender-based violence and other forms of sexual harassment;
- The denial of fair access to opportunities, or failing to take steps to reasonably accommodate the needs of such persons;
- The objectification of women;
- Undermining the contribution of women.

On the grounds of disability:

- Mocking or belittling someone because of their disability

ANNEXURE B

DISCRIMINATION COMPLAINT FORM

Name of Complainant	
Stakeholder Group eg. Pupil, teacher, etc	
Date of Complaint	
Name of Complainant's Representative (If any)	
Name of Person to Whom Complaint is Addressed	
DETAILS OF COMPLAINT Please be as specific as possible: <ul style="list-style-type: none">• What happened?• Where?• When?• Who? Did anyone witness what happened?	

DESIRED OUTCOME

(What would you like to happen about this complaint?)

Signature of Complainant

Signature of Complainant's
Representative (If any)