

DEAI By-Laws

Ethics and Practice (2015)



contact@deal.com.au
www.deal.com.au



www.deai.com.au



contact@deai.com.au



1. Introduction

The DEAI is the professional association representing Developmental Educators and has a role in maintaining, monitoring and improving practice standards as well as the professional education of Developmental Educators

The DEAI is committed to ensuring that its members adhere to the highest standards of ethical practice and professional conduct for the benefit of people with disabilities and their families/carers. The “Code of Ethics and Practice for Developmental Educators” (the Code) is the main document detailing the expected values and ethical responsibilities of Developmental Educators, including:

- Integrity and Professional Responsibility
- Respect for People's Worth, Dignity and Uniqueness
- Concern for Others' Wellbeing and Empowerment
- Community Education.

The ethical standards that the DEAI expects of its members are further stipulated in the:

- DEAI Constitution, detailing governance and membership, and the
- DEAI By-Laws Ethics and Practice (2015) (the By-Laws 2015), setting out the DEAI Complaints Process for Serious Breaches of Ethical Practice.

A breach of ethical practice occurs when a Developmental Educator, who is a current member of the DEAI, acts outside the core values and responsibilities set out in the Code. The DEAI only deals with Serious Breaches of ethical practice.

The DEAI Chair or the Chair's delegated representative, reserves the right to determine, in its absolute discretion, in consultation with the DEAI Executive Committee, whether a complaint is a Serious Breach of the Code and will proceed to the DEAI Complaints Panel.

The DEAI Executive Committee may refer the complainant to an alternative, more appropriate body if the complaint is not deemed to be a Serious Breach of the Code.

These By-Laws (2015) set out the DEAI's processes and procedures for the Complaints Process; that is for making, receiving and responding to formal complaints regarding a Serious Breach of the Code by a Developmental Educator.

2. Definition of Terms

The terms which are used in these By-Laws are defined below:

‘DEAI’ means Developmental Educators Australia Incorporated.

‘The Code’ means the Code of Ethics and Practice for Developmental Educators.

‘Constitution’ means the constitution of the DEAI detailing governance and membership.

‘Developmental Educator’ refers to an individual who is eligible for membership with the DEAI.

‘Member’ means a member of the DEAI and includes student members of the DEAI.

‘DEAI Committee’ means the DEAI Executive Committee that governs the DEAI.

‘The Complaints Process’ means the DEAI Complaints Process for Serious Breaches of Ethical Practice by a Developmental Educator; the process the DEAI uses for making, receiving, and responding to written complaints to the DEAI Executive Committee.

‘Serious Breach’ means a breach of ethical practice that fails to meet the standards set out in the Code of ethics and Practice for Developmental Educators.

‘Complaint’ means a written formal complaint submitted to DEAI Executive Committee through the DEAI Complaints Process.

‘Complainant’ means a person who makes a complaint about a Developmental Educator.

‘Respondent’ means a member of the DEAI about whom a complaint has been made to the DEAI.

‘Complaints Panel’ means a panel of at least 3 members of the DEAI Executive Committee (excluding student representatives) one of whom is the Chair or the Chair’s delegate, which manages the formal complaint.

‘Natural Justice’ means observing the rule against bias and the right to a fair hearing.

3. DEAI Complaints Process for Serious Breaches of Ethical Practice by a Developmental Educator

3.1 What is the DEAI Complaints Process for?

a) The purpose of the Complaints Process is to receive and respond to complaints about an allegation of a Serious Breach of practice by a members of the DEAI in relation to the Code.

b) The Complaints Process only deals with complaints about Developmental Educators who are members of the DEAI both at the time the complaint is received and when the alleged breach occurred. It is not compulsory for Developmental Educators to be a member of the DEAI, therefore not all Developmental Educators are members of the DEAI.

c) The Complaints Process only deals with complaints involving allegations of a Serious Breach as set out in the Code. If the complaint is not deemed a Serious Breach as set out in the Code, the DEAI may give advice to the complainant on considering other options.

d) The Complaints Process cannot be utilized in relation to DEAI Committee members, employees of the DEAI, or DEAI members, if the complaint involves a practice engaged in while performing an official DEAI role. These matters should be addressed by way of the relevant code of conduct for that role.

3.2 Who can make a complaint?

a) Any individual may make a complaint to the DEAI about the conduct of a Developmental Educator who is a member of the DEAI if:

- (i) the person has personal knowledge of the alleged Serious Breach or
- (ii) the person is a close relative/ guardian / friend of the Complainant or otherwise authorised, and the Complainant does not have the capacity to make the complaint themselves.

b) The Chair of the DEAI or the Chair's delegated representative has the absolute discretion, in consultation with the DEAI Committee, to determine whether or not a complaint should be accepted once a complaint is received in writing.

3.3 When can a complaint be made?

a) An individual may make a complaint about a member of the DEAI within 2 calendar years after the date on which the alleged Serious Breach of the Code occurred.

b) The Chair of the DEAI or the Chair's delegated representative has absolute discretion, in consultation with the DEAI Committee, to determine whether or not a complaint should be accepted after the 2 year period has lapsed.

3.4 The responsibilities of complainant

a) The Complainant is required to provide the DEAI Committee with all the necessary information in relation to the complaint and should comply with all procedural requirements set out in the By-Laws (2015).

b) The Complainant is required to cooperate with the Complaints Panel who manages and administers the Complaints Process.

(c) The Chair of the DEAI or the Chair's delegated representative, in consultation with the DEAI Committee, has absolute discretion to determine whether or not the conduct of the Complainant is unreasonable conduct and to provide notice of the same to the Complainant.

3.5 The rights and responsibilities of respondent

a) The respondent is required to cooperate with the Complaints Panel. The Code requires that DEAI members cooperate with the DEAI and any investigations about themselves or other members.

b) The respondent has the right to provide the DEAI Committee with any relevant information regarding the complaint.

c) The respondent must comply with the Complaints Process as set out in the By-Laws (2015) contained herein and any decision made by the Complaints Panel.

d) The respondent has the right of appeal [as outlined below at clause 3.10(e)].

3.6 Confidentiality and Privacy

a) The DEAI Committee is committed to ensuring that both the Complainant's and the Respondent's (and any other party's) rights to privacy are protected at all times.

b) At the discretion of the Complaints Panel relevant information may be made available only to the Respondent, potential witnesses who may assist in the investigation of the Complaint, and the Complaints Panel members.

c) The Complainant, Respondent, potential witnesses, and the Complaints Panel members involved in the Complaints Process:

- i. agree to at all times keep personal information of all parties and the substance of the Complaint confidential.
- ii. agree to sign a confidentiality agreement.

3.7 Conflicts of Interest

a) The members of the Complaints Panel who are involved in the administration or implementation of the Complaint Process have an obligation to:

- i. advise of any relationship or association that they have / had with (any of) the parties involved.
- ii. advise if they have any personal knowledge of the Complaint.
- iii. declare any interest they may have in any in any particular Complaint being considered under the Complaints Process.

3.8 Record Keeping

a) All documents, files and records to do with the Complaints Process will be stored securely and retained for seven years.

3.9 Correspondence

a) Any correspondence or information in relation to the Complaints Process will be sent to both the Complainant and the Respondent by registered post to the address provided.

3.10 Making a complaint against a Developmental Educator

a) Making a complaint:

- i) Any person who wishes to make a complaint about an alleged Serious Breach by a member of the DEAI can make a complaint to the DEAI Committee.
- ii) All complaints under the Complaints Process should be made in writing and submitted to the DEAI Committee.
- iii) The DEAI Chair or the Chair's delegated representative has absolute discretion, in consultation with the DEAI Committee, to determine whether or not a Complaint should proceed to the Complaints process.
- iv) A Complaint may be withdrawn at any time by giving written notice to the DEAI Chair. The Chair or the delegated representative, in consultation with the DEAI Committee, will consider the request to withdraw the Complaint and will determine, in its absolute discretion, whether or not the Complaint should proceed through the Complaints Process.

b) The DEAI receives and examines the complaint:

- i) The DEAI Committee receives and examines complaints made to the DEAI in relation to a Serious Breach of the Code by a DEAI member.
 - ii) The DEAI Chair or the Chair's delegated representative, in consultation with the DEAI Committee, has absolute discretion to determine whether or not the Complaint submitted constitutes a Serious Breach of the Code, and will proceed to the Complaints Process.
 - iii) If the subject matter of the Complaint is being investigated by the police or is the subject of a court proceeding, the Complaints Process will be deferred until the completion of that other investigation or proceeding. Depending on the outcome of such processes or proceedings the Complaints Panel will make a determination regarding consequences.
 - iv) If the complaint is being dealt with by another agency the DEAI Committee may decide to wait until this proceeding has been completed.
- c) The DEAI responds to the complaint:
- i) The DEAI Chair informs the Complainant of the receipt of the Complaint within 5 working days. The Complainant will be advised of the date of the next DEAI Committee meeting at which the Complaint will be tabled.
 - ii) Within 5 working days after the DEAI Committee meeting the DEAI Chair will inform the Complainant whether the Complaint will proceed to the Complaints Panel.
 - iii) If the DEAI Committee decides the Complaint will not proceed to the Complaints Panel, the Complainant has the right to appeal, except where the Complaint was deemed vexatious or frivolous.
 - iv) If the Complaint proceeds to the Complaints Panel, the DEAI Chair will inform the Respondent of the Complaint within 5 days after the DEAI Committee meeting.
 - v) The Respondent may respond to the Complaint within 20 working days of receiving information of the Complaint from the DEAI Chair.
 - vi) If the Respondent does not respond within the time frame the Complaints Panel has absolute discretion to determine a consequence. The Respondent will be offered one further opportunity to respond.
- d) Dealing with the Complaint:
- i) If the DEAI Committee determines the Complaint proceeds to the Complaints Panel, the DEAI Chair or a delegated representative will appoint two other DEAI Committee members (excluding Student Representatives) who will deal with the Complaint.
 - ii) The purpose of the Complaints Panel is to:
 - assess the facts and circumstances that are relevant to the matter.
 - allow the Complainant and the Respondent to present their sides of the matter.
 - seek further information from relevant others and to assess that information.
 - reach a determination in relation to the Complaint.
 - iii) Both parties will have the opportunity to attend a meeting scheduled by the Complaints Panel, with a support person. Whether the meeting will be attended by both parties or each

separately will be determined by the Complaints Panel based on the individual circumstances of the Complaint.

- iv) The support person cannot be a legal representative and must not act as an advocate for the Complainant or Respondent, unless the Complaints Panel advises otherwise.
- v) Submissions to the Complaints Panel should be made in person; the Complaints Panel, in its absolute discretion, may determine that other written submissions will be accepted.
- vi) The Complaints Panel maintains the confidentiality of all parties and observes the principles of Natural Justice.
- vii) All proceedings of the Complaints Process will be documented and records kept.
- viii) The Complaints Panel will determine the outcome of the Complaint. If the Complaints Panel determines that a Serious Breach of the Code has occurred it may impose a consequence on the Respondent.
- ix) Both the Complainant and the Respondent will be informed in writing of the outcome of the Complaints Panel within 20 working days of the conclusion of the meeting.

e) Appeals:

- i) The Complainant or the Respondent may appeal the decision of the Complaints Panel by lodging a written submission to the DEAI Committee, stating the reason for the appeal, within 20 working days of receiving the determination of the Complaints Panel, and only on the following grounds.
 - the Complaints Process was not conducted in accordance with the By Laws (2015).
 - the Complaints Panel's consequence is perceived to be inappropriate.
- ii) No new information regarding the Complaint can be submitted during the appeal.
- iii) The DEAI Chair or the Chair's delegated representative, in its absolute discretion, in consultation with the DEAI Committee, at the next committee meeting, will determine if the appeal will be accepted, if so, on what grounds, and how the appeal will be processed (e.g., a further meeting).
- iv) If the appeal is not accepted the Complainant and Respondent will be informed by the DEAI Chair within 5 days of the DEAI Committee meeting at which that determination was made.
- v) If the appeal is granted the parties will be informed by the DEAI Chair within five days of the Committee's determination.

f) Outcome:

- i) The DEAI Chair will inform the Complainant and the Respondent in writing of the final determination from the Complaints Process and the reasons for the determination, within 20 working days of the conclusion of the meeting.
- ii) The final determination will either be the outcome of the Complaints Panel's determination or the DEAI Committee appeal's determination, and may be that:

- the Complaint has not been substantiated and that the Complaint is therefore, dismissed.
- the Complaint has been substantiated but the Respondent's membership of the DEAI is not affected. The determination may be a consequence which is appropriate and could include:
 - imposing conditions of practice or
 - issuing a formal reprimand or warning
- the Complaint has been substantiated and the Respondent's membership of the DEAI is therefore affected. The determination in this case may be:
 - the Respondent's membership is suspended or terminated.

References

DEAI Code of Ethics and Practice for Developmental Educators

www.deai.com.au

DEAI Constitution

www.deai.com.au

Australian Health Practitioner Regulation Agency (AHPRA)

www.ahpra.gov.au

Australian Association of Social Workers (AASW)

www.aasw.asn.au