

ACCS/ASTI/IMPACT/TUI Code of Practice for Dealing with Complaints of Sexual Harassment in Community & Comprehensive Schools.

To All Staff

ACCS, ASTI, IMPACT and TUI are fully committed to creating an environment within every Community & Comprehensive School that is free of sexual harassment and which promotes personal integrity and dignity. ACCS, ASTI, IMPACT and TUI jointly agreed this document to help promote such an environment in all Community & Comprehensive Schools.

Boards of Management of Community and Comprehensive Schools recognise that sexual harassment can seriously damage working and social conditions for staff and students. This document clearly outlines behaviour that would be considered inappropriate or unacceptable and provides procedures for the making of and dealing with such complaints.

While all staff and students in Community and Comprehensive Schools are responsible for creating a work and study environment free of threat, sexual harassment and intimidation, particular responsibility lies with the Board of Management and School Principal to ensure that proper standards are maintained.

This policy is not intended to stifle normal healthy relationships amongst staff but rather is intended to promote a healthy working and learning environment.

Negotiated between ACCS, ASTI, IMPACT & TUI,

Introduction

The ACCS, ASTI, IMPACT and TUI are committed to ensuring a workplace environment which is characterised by mutual respect, tolerance and affirmation.

The Labour Court has determined that freedom from sexual harassment is a condition of work to which an employee of either sex is entitled. Section 23 of the Employment Equality Act, 1998, specifies that the sexual harassment of one employee by another constitutes discrimination by the employer on the grounds of gender in relation to the harassed person's conditions of employment.

ACCS and the school Board of Management recognise that all employees have the right to a workplace that is free from sexual harassment and are fully committed to ensuring that all employees and students are able to enjoy that right and that sexual harassment will not be tolerated. Complaints of sexual harassment will always be treated seriously, confidentially and in a sensitive manner.

- 1) Sexual harassment of one staff member (teaching or non-teaching) by another staff member will not be tolerated.
- 2) Sexual harassment of one student by another student(s), or of one staff member (teaching or non-teaching) by a student(s) will not be tolerated and is contrary to school policy.
- 3) Sexual harassment of a student by a staff member (teaching and non-teaching) will not be tolerated and constitutes a serious abuse of authority.

As in all matters of discipline, safety and welfare, it is primarily the responsibility of the

employer to establish and sustain proper standards in the workplace. All management personnel have a particular responsibility to ensure that the workplace is free from all forms of sexual harassment so that staff may do their work free from the threat of sexual harassment or intimidation.

Any complaint of sexual harassment shall be fully and properly investigated and if substantiated, will be regarded as grounds for disciplinary action under relevant legislation, collective agreements, contracts and terms and conditions of employment hereinafter referred to as disciplinary action.

Employees and management have a clear role to play in the creation of an environment at work in which sexual harassment is unacceptable. Employees and management can contribute to preventing sexual harassment through an awareness and sensitivity towards the issue and by ensuring that standards of conduct for themselves and for their staff colleagues do not cause offence. An individual's responsibility extends to an awareness of the impact of personal behaviour that could cause offence to other staff members and make them feel uncomfortable or threatened. In addition to ensuring that their own behaviour is not in any way offensive, employees and management should make clear to others that sexual harassment is unacceptable and should support colleagues suffering such treatment. Attempts should be made to resolve complaints of sexual harassment informally in the first instance. If this is not possible, or if the person being harassed so elects, the Formal Procedure (herein) will be invoked. It is important for the recipient of sexual harassment to keep notes detailing times and dates of incidents of sexual harassment and request witnesses, if any, to note them also.

What is Sexual Harassment?

1. Definition

Sexual harassment is a pattern of behaviour that is unwanted, unsolicited and offensive to the recipient. Such behaviour fails to respect the dignity of others and impacts upon the employee in the workplace. It is a pattern of behaviour that any reasonable person finds hostile, intimidating or humiliating. The intent of the alleged perpetrator shall not be relevant in determining whether the behaviour is acceptable.

Harassment implies that unwanted behaviour is being imposed on an individual who finds it hostile, intimidating or humiliating. It is the impact of the conduct on the recipient and not the intent of the accused person that determines whether the behaviour is acceptable. It should not be confused with normal social interaction involving mutually acceptable behaviour. Sexual harassment may occur between men and women or between members of the same sex.

Following on this definition sexual harassment in a school context can include the following:

- Non-verbal sexual harassment: unwelcome uses or display of sexually suggestive or pornographic pictures and calendars, leering or offensive gestures, written communications of a sexual nature.
- Verbal sexual harassment: unwelcome sexual advances, unwelcome pressure for social contact, sexually suggestive jokes, whistling, unwelcome sexually offensive remarks or innuendo of a sexual nature based on a person's sexual orientation, offensive telephone calls of a sexual nature.
- Physical sexual harassment: unwelcome physical contact, groping, pinching, petting, unnecessary touching, unwelcome fondling or kissing.

This code of practice is designed to deal with cases of sexual harassment coming within categories of non-verbal sexual harassment, verbal sexual harassment and physical sexual harassment as set out above. It is not designed to deal with those cases coming under the category of physical sexual assault which would, if proven, amount to criminal wrongdoing.

Procedures for Dealing with Complaints of Sexual Harassment in the Workplace

Purposes of Complaints Procedure

- To provide a fair, consistent and expeditious mechanism to process complaints of sexual harassment involving staff.
- To do so in a manner that affords all concerned full rights in accordance with natural justice.
- To outline the principles for both the employer, the staff member and their representatives in the event of complaints of sexual harassment being made against staff.

Specifically this procedure may be utilised:

- To investigate complaints of sexual harassment made by staff against other members of staff.
- To investigate complaints of sexual harassment made by staff against holders of management responsibility.
- To investigate complaints of sexual harassment made by holders of management responsibility against staff.

Issues to which these procedures do not apply :

- Complaints of sexual harassment made by staff against students. Such complaints will be treated in accordance with the appropriate student code of discipline/behaviour and/or other agreed codes of practice.
- Matters of the professional competence of teachers, which cannot be dealt with at school/centre level or which are referred to the Department of Education & Science for investigation under the terms of circular letter 43/85 or other DES circular letters and agreements as issued from time to time.
- Anonymous complaints.
- Frivolous and vexatious complaints which do not impinge on the work of the staff member.
- Complaints which are the subject of legal proceedings.

Complaints of sexual harassment made by a student(s) against a staff member will be dealt with under appropriate guidelines and/or other agreed codes of practice)

Note: Claims of sexual harassment as defined under the terms of Section 23 of the Employment Equality Act, 1998, may be taken under the provisions of relevant sections of that Act.

Informal Procedures

Stage I

- 1.1 A staff member who feels that he/she may have been sexually harassed should immediately ask the person harassing them to stop. It may be possible and

sufficient for the employee concerned to explain clearly to the person engaging in the unprovoked conduct that the behaviour in question is unwelcome, that it offends them, or makes them uncomfortable and that it interferes with their work. A person who wishes to make a complaint (hereinafter referred to as the complainant) should make an appointment and discuss the matter with the staff member (hereinafter referred to as the subject of the complaint) with a view to resolving the complaint. In circumstances where it is too difficult or embarrassing for an individual to do this on his/her own behalf, an alternative approach would be for an initial approach to be made by a sympathetic colleague. Ideally this should result in a cessation of this unacceptable behaviour. It is very important for the recipient of sexual harassment to keep notes, detailing times and dates of incidents of sexual harassment and request eyewitnesses, if any, to note them also.

- 1.2 If the matter is unresolved at 1.1 and where the complainant feels that he/she cannot directly address the subject of the complaint engaging in the unprovoked conduct, they should ask a Designated Person to do so on his/her behalf. In each school two Designated Persons (male and female) shall be appointed by the employer, following constructive and positive consultation and agreement where possible, in line with industrial relations practice, with the relevant trade union(s). If the sexual harassment complained of does not cease, or, if in the first instance, it is of a nature that the complainant (following discussion with a Designated Person) considers that it should be reported, the matter should proceed to stage 1.3. The procedures at stage 1.2 should be concluded within 5 working days of the reporting of the matter to the Designated Person.
- 1.3 If the matter is unresolved at the stage 1.2, the complainant should approach the Officer of First Recourse normally understood to be the Deputy Principal or another person agreed between the relevant teacher trade union and school management, who endeavour to resolve the complaint through an informal process as in stage 1.2. If the Officer of First Resource is the subject of the complaint, another agreed person shall be appointed to this position. The procedures at stage 1.3 should be concluded within 5 working days of the reporting of the matter to the Officer of First recourse.

Formal Procedures

Stage II

- 2.1 If the issue is not resolved at stage I, the complainant should lodge the complaint in writing with the Investigating Officer of Second Recourse hereinafter referred to as the Investigating Officer (normally understood to be the Principal Teacher in a school context). An allegation of sexual harassment shall be investigated by the Investigating Officer. Where the Investigating Officer is a party to the complaint, an allegation shall be investigated by a person nominated by the employer in agreement with the ACCS, ASTI, IMPACT and TUI. The Investigating Officer shall be responsible on behalf of management for investigating any complaint of sexual harassment and recommending action.
- 2.2 Investigations of any complaint of sexual harassment will be handled with sensitivity and with due respect to both the complainant and the subject of the complaint. It is understood that all complaints will be investigated with minimum delay. The Investigating Officer should acknowledge and note that the complaint has been received by dealing with the matter as follows:
 - (a) supply the staff member complained of with a copy of the written

complaint and invite his/her written response;

- (b) arrange meeting(s) with the parties to the complaint either separately or jointly with a view to resolving the complaint. Such meeting(s) should normally take place within ten working days of receipt of the written complaint as specified in 2.1.
- 2.3 The complainant and the subject of the complaint may each be accompanied by a colleague or another person (non-legal) of his/her choice. The discretion to afford representation by ACCS, ASTI, IMPACT or TUI to either party rests with the relevant trade union/school management association.
- 2.4 The Investigating Officer shall convey the outcome of these discussions/investigations in writing to the parties to the complaint within three working days of the meetings referred to in 2.2(b). The Investigating Officer may:
- Indicate whether or not the matter has been resolved to the satisfaction of all parties or whether his/her findings are inconclusive.
 - Where the findings are inconclusive then the school internal investigations end and the parties to the complaint shall be so advised.
 - Uphold the complaint on the basis of the available evidence. Notification to both parties shall include reference to the right of the subject of the complaint to appeal the decision to uphold the complaint.
 - • Deem the complaint unfounded. Notification to both parties shall include reference to the right of the complainant to appeal the decision to reject the complaint.
- 2.5 Where an Investigating Officer deems a complaint of sexual harassment to be valid or to be unfounded and malicious, he/she shall furnish a report to the Chairperson of the Board of Management. The report may include a recommendation to the Board of Management that it may consider disciplinary action.

Stage III

- 3.1 (a) All documentation in respect of the complaint shall be furnished to the Board of Management. The Board of Management will convene to consider any documents/reports forwarded for its attention.
- (b) The subject of the complaint may be accompanied and represented by a colleague or another person of his/her choice. The discretion to afford representation by ACCS, ASTI, IMPACT or TUI rests with the relevant trade union/school management association. The subject of the complaint shall be afforded an opportunity to make a formal presentation of his/her case to the Board of Management.
- (c) The complainant may be accompanied and represented by a colleague or another person (non-legal) of his/her choice. The discretion to afford representation by ACCS, ASTI, IMPACT or TUI rests with the relevant trade union/school management association. The complainant shall be afforded an opportunity to make a formal presentation of his/her case to the Board of Management.
- (d) The Board of Management is entitled to seek appropriate advice in the course of any investigation in accordance with normal procedures.
- (e) All meeting/hearing(s) of the Board of Management will normally take place within 15 working days of the receipt of the Investigating Officer's report.

- (f) When the Board of Management has completed its deliberations, the Board's decision, together with any recommended disciplinary sanctions should be conveyed in writing to the subject of the complaint, the complainant and the Board of Management, within 6 working days of the decision being taken. Notification to both the complainant and the subject of the complaint will advise the right of appeal to a Forum.

Proposed disciplinary sanctions may include:

- (i) An oral warning
- (ii) A written warning
- (iii) A final written warning
- (iv) Withholding/refusal of an increment(s)
- (v) Demotion
- (vi) Suspension
- (vii) Dismissal

Generally, the steps in the procedure would be progressive (e.g. oral warning, written warning, a final written warning etc.). However, there may be instances where more serious action is warranted at an earlier stage. A staff member may be suspended on full pay pending the outcome of an investigation into an alleged case of sexual harassment. Written warnings *as in (g) (f) (ii)* will be placed on a staff member's record and may be removed after an agreed specified period of time with the employee advised accordingly. All other warnings/sanctions by the Board of Management per (g)(f) (iii), (iv), (v), (vi) and (vii) will be placed permanently on the staff member's record/file. Disciplinary action will be taken in accordance with relevant legislation, collective agreements, contracts and terms and conditions of employment.

Stage IV

- 4.1 1 The Board of Management will afford an opportunity to both the complainant and the subject of the complaint to appeal the report and/or recommendations of the Board of Management to a Forum. The Forum which shall be composed of two members from a national panel agreed between ACCS, ASTI, IMPACT and TUI.
- 2 The complainant and the subject of the complaint may be accompanied and represented by a colleague or another person (non-legal) of his/her choice. The discretion to afford representation by ACCS, ASTI, IMPACT or TUI rests with the relevant trade union/school management association.
- 4.2 The Forum, will formally consider the report and/or recommendations of the Board of Management and make a decision to either ratify, reject or amend the report and/or its recommendation(s).
- 4.3 Any proposed disciplinary sanctions will be processed in accordance with existing teacher trade union/school management association agreements and relevant legislation.
- 4.4 The decision of the Forum shall be final and shall be communicated to all parties concerned.

Protection and Support

Staff shall be protected from intimidation, victimisation or discrimination for filing a complaint or assisting in an investigation. Retaliation against a member of staff or student for complaining about sexual harassment is considered a disciplinary offence. A malicious complaint made by a staff member will be treated as misconduct under the

disciplinary procedures herein.

Assistance in the Event of Sexual Harassment

Every effort will be made to assist if they so wish, persons who are victims of sexual harassment to deal with the problem and where it is requested, the services of a counsellor will be made available by the Board of Management. Persons who sexually harass others may be requested to attend counselling to prevent further incidences of sexual harassment occurring. Access to such counselling may be made available by the Board of Management.

At all stages of the Complaints Procedure a clear record should be kept of:

- The investigation undertaken.
- All communications to/by the complainant, the subject of the complaint, the Officer of First Recourse, the Investigating Officer, the Board of Management and the Forum.
- The steps and all the decisions taken.

Where a complaint has been rejected or deemed unfounded, a statement to that effect shall conclude the record in the personnel file of the complainant. All records in relation to a rejected/unfounded complaint shall be removed from the personnel file of the subject of the complaint. A statement of the outcome of the investigation will conclude all other files. Where a statement of the outcome of the investigation confirms the allegation to be true then the statement of outcome shall be placed on the file/record of the person against whom the investigation upheld the complaint.

Review

This complaints procedure shall be reviewed after three years.