

ACCS, ASTI and TUI Code of Practice for Processing **Complaints** made by Parents / Guardians or Students (who have reached the age of 18 years) against a Teacher in Community and Comprehensive Schools

ACCS, ASTI and TUI Code of Practice for Dealing with **Complaints of Sexual Harassment** of a Teacher by a Student in Community and Comprehensive Schools



ACCS has also agreed these Codes of Practice with PACCS



March 2005

ACCS, ASTI and TUI Code of Practice for Processing Complaints made by Parents / Guardians or Students (who have reached the age of 18 years) against a Teacher in Community and Comprehensive Schools

This Code of Practice has also been agreed between PACCS and ACCS

Introduction

Procedures are necessary to ensure fair treatment for all in the school and acceptable procedures should be known, agreed, and observed in the interest of good relationships with Parents/Guardians/Students, good industrial relations with Teaching Staff and harmony in the school environment. Throughout the procedures outlined below all communication between the Teacher, Parent/Guardian and or Student (who has reached the age of 18 years) must take place in an atmosphere that is calm, dignified and in a climate that respects the viewpoint of either party involved in the Complaints Procedure.

It is to the advantage of the parties to the complaint that a speedy resolution be secured by the complaints process.

Periodic review of all procedures should take place to ensure practices are good and adhere to any developments in employment legislation or other legislation or case law.

Purpose of Complaints Procedure

- (a) To provide a fair, consistent and equitable mechanism for processing complaints by Parents/Guardians or Students (who have reached the age of 18 years) against Teachers.
- (b) To do so in a manner that affords all concerned full rights in accordance with natural justice.

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- (c) To outline the procedures, which should be followed by all – Board of Management, Teachers, Parents/Guardians and or Students over 18 years of age and or their representatives, in the event of complaints being made against Teachers.

Exclusions

When complaints are deemed by the Principal//Board of Management to be:-

- (i) On matters of professional competence which cannot be dealt with at school level and which may be referred to the Department of Education and Science for investigation. The Complainant to be informed of any such decision.
- (ii) Frivolous, vexatious or anonymous complaints and complaints which do not impinge on the work of a Teacher in a school;
- (iii) Complaints in which either party has had recourse to law or to another standard procedure, may be excluded from the scope of this procedure.

Introduction

- (a) Verbal complaints may be processed informally through Stage 1 of the procedure. Where the complaint is made in writing initially, the complaint should be processed through Stage 1 but a copy of the complaint should be given to the Teacher at Stage 1.
- (b) Only those complaints which are written and signed by the Complainants may be investigated through stage three and or stage four of these procedures.
- (c) The Complainant to be informed if the complaint is amenable to resolution within the terms of these procedures, and if not the reasons for this decision.

Stage 1

- 1.1 A Parent/Guardian who wishes to make a complaint should unless there is good and sufficient reason in the first instance make an appointment to discuss the matter with the Teacher concerned, with a view to resolving the complaint. A Student attending the school who is over 18 years of age who wishes to make a complaint should in the first instance lodge the complaint through the existing agreed pastoral care structures in the school.
- 1.2 Where the Parent/Guardian or a Student (who has reached the age of 18 years) is unable to resolve the complaint with the Teacher, she/he should approach the Principal with a view to resolving it.

It is envisaged that most complaints received under stage 1 would be resolved to the satisfaction of both parties to the complaint.

Stage 2

- 2.1 A Parent/Guardian or a Student (who has reached the age of 18 years) who is unable to resolve the complaint at Stage 1 may seek an appointment to report and discuss the matter with the school Principal with a view to resolving the complaint.

The Principal will arrange a meeting with a view to resolving the complaint. In some instances and where deemed appropriate by the Parent/Guardian and the Teacher it may be necessary for the Parent/Guardian, Teacher and school Principal to meet with a view to resolving the complaint. Such a meeting will take place within a maximum of seven days.

Both parties to the complaint may be accompanied at such a meeting by a Trade Union representative or a friend/colleague.

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- 2.2 Following the consultation process with both parties to the complaint, the Principal will communicate the outcome verbally to both parties.
 - 2.3 If after Stages 2.1 and 2.2 the complaint is still unresolved, the Parent/Guardian or a Student (who has reached the age of 18 years) should be advised that they may raise the matter formally with the Board of Management as set out at Stage 3 with a view to resolving it.
 - 2.4 In the case of a complaint against a Principal, the Parent/Guardian or a Student (who has reached the age of 18 years) should discuss the complaint with the Principal, who may be accompanied by a Union Representative or colleague in the first instance. If the Parent/Guardian/Student is unable to resolve the complaint with the Principal, the complaint may be processed as provided for at Stages 3 and 4 of this procedure.

It is envisaged that the overwhelming majority of complaints will be resolved at either stages 1 and 2.

Stage 3

- 3.1 If the issue is not resolved at Stage 1 or 2 then the Parent/Guardian/Student should lodge the complaint in writing with the Secretary of the Board of Management.
- 3.2 The Board of Management should formally acknowledge receipt of the complaint, note it formally and appoint a member of the Board of Management and the school Principal to deal with the matter. Any member of the Board of Management to whom a complaint refers shall be excluded from discussion/decision of the Board of Management on the matter. If the Secretary to the Board of Management is the subject of the complaint, then correspondence in this instance should be addressed to the Chairperson, Board of Management
- 3.3 The appointed representatives (if Principal is the subject of the complaint then 2 Board of Management Representatives) must, subject to the general authorisation of the Board of Management:-
 - (a) supply the Teacher with a copy of the written complaint, and a copy of all other written evidence submitted by the Parent/Guardian or a Student (who has reached the age of 18 years).
 - (b) supply the Parent/Guardian or a Student (who has reached the age of 18 years) with copy of all written documentation concerning the complaint received by the Principal from the Teacher or report written by the school Principal following his/her investigation at Stage 2.2.

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- 3.4 The duly authorised representatives of the Board of Management should convey the outcome of any discussions / investigation, in writing, to the Teacher, Complainant and the Board of Management and indicate whether or not the matter has been resolved to the satisfaction of all parties.
 - 3.5 If the complaint has not been resolved at this stage and the Complainant wishes to proceed to Stage 4 she/he shall indicate this in writing to the Board of Management within a maximum of 10 school days of receipt of the letter referred to in 3.4.

Stage 4

- 4.1 If the Board of Management considers the complaint is not substantiated, the Teacher and the Complainant should be so informed within 3 days of the Board of Management meeting.
- 4.2 If the Board of Management considers that the complaint warrants further investigation, it shall proceed as follows:
 - (a) both parties to the complaint shall be informed that the investigation is proceeding to the next stage;
 - (b) both parties to the complaint shall be supplied with a copy of all written evidence relevant to the complaint;
 - (c) the Teacher shall be requested to supply a written statement to the Board of Management in response to the complaint;
 - (d) both parties to the complaint shall be afforded an opportunity to make formal presentations of their case/position to the Board of Management. Both parties to the complaint would be entitled to be accompanied and assisted by a friend/colleague (non-legal) or Trade Union representative at any such meeting, and
 - (e) the meeting/hearing of the Board of Management referred to in 4.2(d) will take place within a maximum of 11 school days of the meeting referred to in 2.2.
- 4.3 When the Board of Management has completed its investigation, the decision of the Board of Management shall be conveyed in writing to the Teacher and the Complainant within 5 school days of the decision being taken. The Board will also outline how its decision is to impact on the student.

A member(s) of the Board of Management who has acted as an authorized representative(s) of the Board of Management in the investigation of the complaint should not participate in the decisions of the Board of Management relating to the application of any disciplinary action.

- 4.4 The decision of the Board of Management shall be final subject to section 4.5.

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- 4.5. In the event of the complaint being upheld the Teacher will have recourse to Trade Union and Management agreements, where they exist, but all disciplinary procedures undertaken by the Board of Management will proceed in accordance with the principles of natural justice.
- 4.6. If disciplinary action is to be initiated against a Teacher after stage 4.4 it will be effected in accordance with procedures agreed between ACCS, ASTI, TUI and the DES.
- 4.7 Where the complaint lodged is proved to be groundless then all correspondence relating to complaint should be removed from the Teachers file except for a statement of the complaints and outcome of the investigation.

If the complaint is upheld then the relevant file may be removed from the school records following agreement between all the parties involved.

Notes

- (i) In this procedure a school day means a day on which the school is in operation.
- (ii) At all stages of the Complaints Procedure a written record should be kept of
- (a) the investigation undertaken;
 - (b) communications to Board of Management/Parent/Guardian or a Student (who has reached the age of 18 years) and Teacher, and
 - (c) the steps and /or decision taken.

Copies of this written record may be made available for inspection to the Complainant and to the Teacher concerned.

- (iii) This Code of Practice for processing Complaints made by Parents/Guardians of Students or Students (who have reached the age of 18 years) against the Teacher shall be reviewed by the ACCS, ASTI and TUI every five years or earlier at the request of any one of the parties.
- (iv) The Complaints procedure will be reviewed by ACCS and PACCS every five years or earlier at the request of either one of the parties.

ACCS, ASTI and TUI Code of Practice for Dealing with Complaints of Sexual Harassment of a Member of Staff by a Student in Community and Comprehensive Schools

This Code of Practice has also been agreed between PACCS and ACCS

To All Staff

ACCS, ASTI 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. All parties have 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 and 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, from threat sexual harassment and intimidation, particular responsibility lies with the Board of Management and school Principal to ensure that proper standards are maintained.

The Board of Management should ensure that Staff, Students and Parents/Guardians are appraised of what may constitute sexual harassment.

Introduction

The ACCS, ASTI 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. The Employment Equality Acts, 1998 and 2004, state that the sexual harassment constitutes discrimination.

ACCS and the school Boards 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.

Sexual harassment of a Staff Member by a Student will not be tolerated.

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 members of Staff along with all Students (supported by Parents/Guardians) will assist school management in the creation of an environment in the workplace which is free from all forms of harassment. All management personnel have a particular responsibility to ensure that the workplace is free from all forms of sexual harassment so that Staff may carry out 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, sanctions may be imposed as per school disciplinary procedure, Department of Education & Science circular letters and relevant legislation.

Prevention

Employees, Management and Students have a clear role to play in the creation of an environment at work in which sexual harassment is unacceptable. Employees, Students and Management can contribute to preventing sexual harassment through an awareness and sensitivity towards the issue and by ensuring that standards of conduct do not cause offence. A Student's responsibility extends to an awareness of the impact of his/her behaviour that could cause offence to Staff Members and make them feel uncomfortable or threatened.

Attempts should be made to resolve complaints of sexual harassment made by Teachers against Students 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. 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.

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, texts on mobile phones, written communication 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

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.

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- To outline the principles for both the employer, the staff member, the students and their representatives in the event of complaints of sexual harassment being made by staff against students.

Specifically this procedure may be utilised:

- To investigate complaints of sexual harassment made by staff against students

Informal Procedures

Stage I

- 1.1 A Staff Member who feels that he/she may have been sexually harassed should advise the Student that their behaviour is totally unacceptable. The Staff Member may where circumstances dictate the seriousness of the incident and the action taken to date, notify the Parent/Guardian in writing of what occurred.

An alternative approach would be for an initial approach to be made by an appropriate colleague (stage 1.2).

Ideally this should result in a cessation of this unacceptable behaviour.

It is very important for the complainant 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 At the stage 1.1, the Complainant may approach the colleague who will endeavour to resolve the complaint through an informal process as in stage 1.1. The procedures at stage 1.2 should be concluded within 3 working days of the aforementioned reporting of the matter.

It is envisaged that most allegations will be resolved at this informal stage 1. Where matters are not resolved then they may be referred to Stage 2.

Formal Procedures

Stage II

During the course of an investigation, which has not been dealt with under the school Code of Discipline/Behaviour, into an allegation of sexual harassment of a member of Staff by a Student, the school Principal acting on behalf of the Board of Management may decide to make alternative school timetable arrangements within the school, in the best interests of both parties to the allegation, for the ongoing education of the

Student while the matter is being investigated. All members of staff must fully support the implications of any decision made by the Principal in these instances.

2.1 If the issue is not resolved at stage 1, the Complainant should lodge the complaint in writing with the Principal. An allegation of sexual harassment shall be investigated by the Principal who will keep the Parents/Guardians of the Student fully informed of developments throughout the process. The Principal shall be responsible on behalf of management for investigating any complaint of sexual harassment and recommending action if necessary, to the Board of Management, in accordance with the school Code of Discipline/Behaviour.

2.2 Investigations of any complaint of sexual harassment will be handled with sensitivity and with due respect to both the Teacher and the Student. It is understood that all complaints will be investigated with minimum delay. The Principal should acknowledge and note that the complaint has been received by dealing with the matter as follows:

(a) supply the Student and his/her Parents/Guardian complained of with a copy of the written complaint and invite the Students report/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 6 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, the Teacher by a colleague/Trade Union representative and the Student by a Parent/Guardian.

2.4 The Principal shall convey the outcome of these discussions/ investigations in writing to the parties to the complaint within 3 school working days of the meetings referred to in 2.2(b). The Principal 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 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 within 5 school working days.
- Deem the complaint unfounded. Notification to both parties shall include reference to the right of the teacher to appeal to the Board of Management where the complaint has been rejected.

2.5 Where a Principal deems a complaint of sexual harassment to be valid he/she shall furnish a report to the Chairperson of the Board of Management. The Principal may impose a sanction as provided for and authorised by the school Code of Discipline/Behaviour. The report may include a recommendation to the Board of Management that it may consider further appropriate sanctions in accordance with the school Code of Discipline/Behaviour, Department of Education and Science circular letters and relevant legislation. The Parent/Guardian or Student (over 18 years of age) may appeal the decision of the Principal to the Board of Management under the terms of Section 29, Education Act 1998 as outlined in DES circular letter M48/01.

2.6 Where the matter is resolved to the satisfaction of all parties to the complaint further dialogue must take place between the Principal, the Teacher subjected to the sexual harassment and the Parent(s)/Guardian(s) or the Student (where the student is 18 years or over), as to how to best facilitate and plan the on-going education of the student into the future.

The vast majority of complaints are resolved at either stage 1 stage 2. Where matters are not resolved the it may be referred to stage 3.

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 Student (over 18 years of age) or the Parent/Guardian shall be afforded an opportunity to make a formal presentation of his/her case to the Board of Management. Both parties to the allegation may be accompanied at such a presentation to the Board of Management by a Trade Union representative or a friend. The Student may be accompanied and represented by their Parent/Guardian.

(c) The Teacher may be accompanied and represented by a colleague or Trade Union representative. 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 shall take place within 11 school working days of the receipt, of the Principal's report.

(f) When the Board of Management has completed its deliberations, the Board's decision, together with any recommended disciplinary sanctions which may

arise will be conveyed in writing to the Student and/or his/her Parents/Guardian, the Teacher and the Board of Management, within 6 school working days of the decision being taken. Notification to both the Teacher and the Student and his/her Parents/Guardian will advise of the right of appeal under natural justice and the terms of current legislation.

Generally, the steps in the procedure would be progressive but would be of an order which would discourage and eliminate sexual harassment. There may be instances where the ultimate sanctions against a student are required, i.e. expulsion. However, disciplinary action will be taken in accordance with school disciplinary code, Department of Education & Science circular letters and relevant legislation.

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 for complaining about sexual harassment is considered a disciplinary matter. Where an allegation is lodged with school management then the responsibility of protection lies with the school authority.

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. Students who sexually harass a Staff Member will be required to avail of the schools pastoral care team services and or be referred to a NEPS educational psychologist.

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

- The investigation undertaken.
- All communications to/by the Teacher, the Student and his/her Parents/Guardian, the Principal and the Board of Management.
- 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 file of both the Teacher and the Student. All other records in relation to a rejected/unfounded complaint shall be removed from the student file of the student of the complaint. 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 Student against whom the investigation upheld the complaint.

Review

This Code of Practice shall be reviewed by ACCS, ASTI and TUI after 5 years or earlier if requested by either one of the parties to the agreement.

This Code of Practice shall be reviewed by ACCS and PACCS after 5 years or earlier if requested by either one of the parties to the agreement.

For further information contact:

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