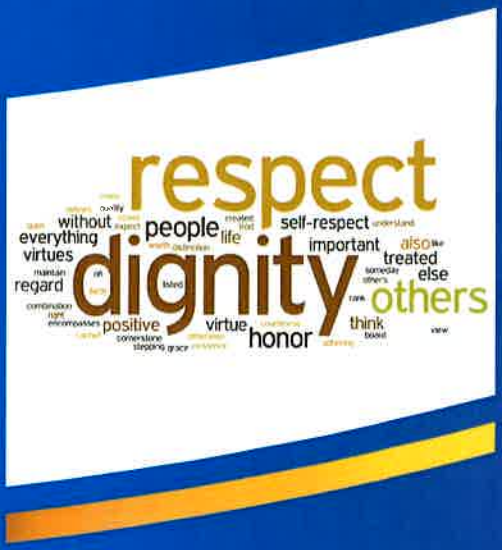
Dignity at Work

Policy & Procedure



your school, your community

December 2018

ACCS Association of Community and Comprehensive Schools

ASTI

FORSA

St. Mary's Secondary School, Newport, Co. Tipperary.

FÓRSA ASTI

DIGNITY AT WORK POLICY & PROCEDURE 1 **Dignity at Work**

Dignity at Work

Policy and Procedures for dealing with complaints of Bullying, Harassment and Sexual Harassment of employees in Community and Comprehensive Schools.

This Policy will be reviewed no later than 5 years from December 2018.

Contents **Page Number**

Policy Statement 2

Review of Policy & Procedure 2

Introduction 2

Management's Obligations 3-4

Definitions 5-9
- Workplace Bullying
- Harassment
- Sexual Harassment

Informal Procedure 10-11

Mediation 11-12

Formal Procedure 12-15
- Initial Internal Examination
- External Investigation
- Appeal Process

Disciplinary Procedures 16

Support 16

Timeframe 16

Monitoring 16

Communication/Training/Awareness 17

Appendix 1: Contact Person(s) 18

Appendix 2: Sample Terms of Reference for the conduct of a formal investigation 19

Appendix 3: Final Investigation Report 24

Policy Statement

The Association of Community and Comprehensive Schools (ACCS), the Association of Secondary Teachers of Ireland (ASTI), FORSA and the Teachers' Union of Ireland (TUI) have jointly agreed this policy and procedure ("this policy") whereby bullying/harassment/sexual harassment in schools and places of work is dealt with efficiently, effectively and fairly through agreed procedures for the making of and dealing with complaints.

ACCS, ASTI, FORSA and TUI are fully committed to creating, within every Community and Comprehensive School, an environment that is free of bullying/harassment/sexual harassment and which promotes personal integrity and dignity.

The provisions of LRC Codes of Practice S.I. No.17/2002 and S.I. 208/2012 for addressing bullying in the Workplace and harassment/sexual harassment respectively and the Health & Safety Authority 2007 Code of Practice on the prevention and resolution of bullying at work have been incorporated into this policy.

This policy sets out the procedure which must be adhered to in the operation of the policy at all stages.

The policy is an industrial relations procedure. In circumstances where legal action is invoked, the policy will be suspended and the operation of the law will take precedence.

Review of Policy & Procedure

This policy and procedure ("this Policy") is subject to review no later than five years from the date on which it agreed and in line with changes in law, relevant case law or other developments.

Introduction

ACCS, ASTI, FORSA and TUI are committed to ensuring a workplace environment that is free from bullying/harassment/sexual harassment and is characterised by mutual respect, tolerance and affirmation.

Bullying/harassment/sexual harassment is behaviour that is destructive to a positive working atmosphere and will not be tolerated. ACCS and Boards of Management recognise that all employees in Community and Comprehensive Schools have the right to be treated with dignity and respect at work and the right to work in an environment that is free from bullying/harassment/sexual harassment. It is also recognised that the work environment is aimed at

providing a high quality service in an atmosphere of respect, collaboration, openness, safety and equality.

Bullying/harassment/sexual harassment at work by the employer, employees and by other persons engaged in the provision of goods and services to the school will not be tolerated. In the event of a complaint being upheld against a non-employee, appropriate sanctions may be imposed which could in particular circumstances include termination of contract, suspension of service, exclusion from the premises etc. as appropriate.

Management's Obligations

Management has a particular responsibility to ensure that the workplace is free from any form of bullying/harassment/sexual harassment and that complaints are addressed expeditiously and with a minimum of distress to all parties involved. Particular responsibility lies with Boards of Management and School Principals to ensure that proper standards are maintained.

The importance of the prevention of workplace bullying/harassment/sexual harassment in the workplace is imperative. The best way to eliminate bullying/harassment/sexual harassment in the workplace is to foster and support an environment which is positive, inclusive and free of bullying/harassment/sexual harassment by any person and where all employees have the opportunity to fulfil their potential.

In particular Boards of Management should:

- Provide information to employees on induction, e.g copy of policy in staff handbook;
- Provide good example by treating all in the place of work with courtesy and respect;
- Provide training on this Policy;
- Promote awareness of this Policy;
- Be vigilant for signs of bullying/harassment/sexual harassment at work and take action before a problem escalates;
- Deal sensitively with employees involved in a complaint whether as complainant or respondent;
- Ensure that the complainant and respondent are treated fairly;
- Explain the Dignity at Work procedures to be followed if a complaint is made. A copy of the procedures is provided in the staff handbook, at induction and through other suitable channels;
- Ensure that an employee making a complaint is not victimized for doing so; and
- Monitor and follow up the situation after a complaint is made.

In accordance with the Safety, Health and Welfare at Work Act 2005, all employees have a duty not to engage in improper conduct or behaviour that is likely to endanger their own safety, health and welfare or work or that of any other person.

Employees have responsibility in creating and contributing to the maintenance of a work environment free from bullying/harassment/sexual harassment or conduct likely to contribute to same. All employees carry responsibility for their own behaviour and have a positive duty to comply with this policy and to treat all colleagues with respect and dignity.

Employees also have an obligation to cooperate with the investigation of complaints of bullying/harassment/sexual harassment and to cooperate by providing any relevant information when an allegation of bullying at work is being looked into whether in an informal or formal stage.

Complaints of bullying/harassment/sexual harassment will be treated with fairness, sensitivity and respect. Confidentiality will be maintained throughout to the greatest extent possible, consistent with the requirements of a fair investigation. In the course of investigating the complaint, no assumptions shall be made about the culpability of the alleged perpetrator. Employees who make complaints of bullying/harassment/sexual harassment will not be victimized, even if the complaint is not upheld.

Making a complaint under this policy will not affect an employee's statutory rights or entitlement to make a claim to the Workplace Relations Commission. A claim to the Workplace Relations Commission must be made within six months of the alleged occurrence of harassment/sexual harassment. The time limit may be extended up to a maximum of 12 months if the complainant has demonstrated reasonable cause for the delay.

Nothing in the policy limits the right of Boards of Management to investigate any matter which may relate to bullying/harassment/sexual harassment in circumstances other than where a complaint has been made. All employees continue to have an obligation to cooperate with such investigation.

The policy extends to behaviour which occurs off the school premises, such as at work related social functions or training events, provided there is a nexus with the work of the school and its employees.

Complaints of bullying/harassment/sexual harassment may be dealt with either in an informal or a formal way as set out below.

The intention of this policy is:

- To provide a fair, consistent and expeditious mechanism to process complaints of bullying, harassment and sexual harassment in the workplace;
- To do so in a manner that affords all concerned full rights in accordance with natural justice and fair procedures;
- To outline the procedures in the event of a complaint of bullying, harassment/ sexual harassment being made;
- To encourage the use of informal resolution methods and the use of mediation as often and as early as possible to resolve issues or complaints as provided for in this policy.

Definitions

A. Workplace Bullying

"Workplace Bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but, as a once-off incident, is not considered to be bullying"[1]

The following behaviours are illustrative rather than exhaustive examples of types of bullying:

- Exclusion with negative consequences;
- Giving employees impossible deadlines to complete tasks;
- Consistently removing work or responsibilities from an employee without explanation or reason;
- Verbal abuse/insults;
- Being treated less favourably than colleagues;
- Intrusion-pestering, spying or stalking;
- Menacing behavior;
- Intimidation;
- Aggression;

[1] Recommended by the Report of the Task Force on the Prevention of Workplace Bullying and adopted in the LRC 2002 Code and the HSA 2007 Code.

- Undermining a person's authority, work or achievements;
- Excessive monitoring of work;
- Humiliation;
- Withholding work-related information;
- Blame for things beyond the person's control.

Bullying at work can involve people in many different work situations and at all levels:

- Manager/supervisor to employee;
- Employee to supervisor/manager;
- One employee to another (or group to group);
- Non-employee to employee; and
- Employee/supervisor/manager to non-employee.

B. Harassment[2]

Harassment is any form of unwanted conduct related to any of the discriminatory grounds outlined below[3], being conduct which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. Such unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words or other material.

Harassment includes situations where the employee does not have the relevant characteristic under the discriminatory grounds but the perpetrator believes that s/he has that characteristic.

Further, a single incident may constitute harassment.

The following behaviours are illustrative rather than exhaustive examples of types of harassment:

- Verbal harassment-jokes, comments, ridicule or songs;
- Written harassment-including faxes, messaging, emails or notices or social media;
- Physical harassment-jostling, shoving or any form of assault or other forms of unwanted physical contact;
- Intimidatory harassment-gestures, posturing or threatening poses;

[2] Section 14A(7) Equality Act 2004.

[3] Sexual Orientation; Age; Civil Status; Religion; Disability; Family Status; Race; Membership of the Traveller Community; Gender.

- Visual displays such as posters, emblems or badges;
- Excessive monitoring of work;
- Isolation or exclusion from social activities.

It should be noted that it is up to the employee/person to decide what behaviour is unwelcome irrespective of the attitude of others.

C. Sexual Harassment[4]

Sexual Harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. Such unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words or other material.

Sexual harassment is a form of discrimination on the gender[5] ground in relation to conditions of employment. The following behaviours are illustrative rather than exhaustive examples of types of harassment:

- Physical conduct of a sexual nature-this may include unwanted physical contact such as unnecessary touching, patting or pinching or brushing against another employee's body, assault and coercive sexual intercourse;
- Verbal conduct of a sexual nature-this includes unwelcome sexual advances, propositions or pressure for sexual activity, continued suggestions for social activity outside the work place after it has been made clear that such suggestions are unwelcome, unwanted or offensive flirtations, suggestive remarks, innuendos or lewd comments;
- Non-verbal conduct of a sexual nature-this may include the display of pornographic or sexually suggestive pictures, objects, written materials, emails, text-messages, faxes or other forms of social media. It may also include leering, whistling or making sexually suggestive gestures; and
- Gender-based conduct - this includes conduct that denigrates or ridicules or is intimidatory or physically abusive of an employee because of his or her sexual orientation such as derogatory or degrading abuse or insults which are gender based.

[4] Section 14A(7) Equality Act 2004.
[5] Section 14A(7) Equality Act 2004.

The Employment Equality Acts 1998 - 2015 do not prohibit all relations of a sexual or social nature at work. To constitute harassment/sexual harassment the behaviour complained of must firstly be **unwelcome**. It is the unwanted nature of the conduct which distinguishes harassment/sexual harassment from behaviour which is welcome and mutual. The fact that an individual has previously agreed to the behaviour does not stop him/her from deciding that it has become unwelcome.

In addition, to constitute harassment/sexual harassment under the Employment Equality Acts 1998 - 2015, the behaviour must have the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

Key points

Investigations into bullying/inappropriate behavior/harassment and sexual harassment will take due account of the impact of the behaviours on the recipient.

The reasonable and essential discipline arising from the good management of the performance of an employee at work does not amount to bullying/harassment/sexual harassment (including the supervision of work and performance related discussions). Similarly, actions taken which can be justified as regards the safety, health and welfare of employees[6] do not amount to bullying/harassment/sexual harassment.

For example, an employee whose performance is continuously signaled at a level below required targets may feel threatened and insecure in his/her work but this in itself does not indicate bullying/harassment.

In addition, it should not be confused with workplace interpersonal conflicts, which do not necessarily constitute bullying/harassment/sexual harassment.

Examples of what is <u>not</u> Bullying:

- An isolated incident of inappropriate behaviour may be an affront to a person's dignity at work but, as a once-off incident, is not considered to be bullying;
- Fair and constructive criticism of an employee's performance, conduct or attendance;
- Reasonable and essential discipline arising from the appropriate management of the performance of an employee at work;

[6] HSA 2007 Code of Practice.

- Legitimate management responses in crisis situations which require immediate action;
- Complaints relating to reasonable instructions issued by a manager, assignment of normal duties or relating to terms and conditions of employment.

Examples of what is not Harassment/Sexual Harassment:

- Complaints that relate other than to the nine grounds;
- Fair and constructive criticism of an employee's performance, conduct or attendance;
- Reasonable and essential discipline arising from the appropriate management of the performance of an employee at work;
- Legitimate management responses in crisis situations which require immediate action;
- Complaints relating to reasonable instructions issued by a manager, assignment of normal duties or relating to terms and conditions of employment.

This policy does not apply to:

- Complaints of bullying/harassment/sexual harassment made by employees against students. Such complaints will be treated in accordance with the school's Code of Behavior;
- Matters of the professional competence of teachers which are dealt with in accordance with circular letter 49/2018;
- Incidents between employees which occur outside of the school setting and/or school events and which do not have a nexus to the work of the school and its employees;
- Complaints which are the subject of legal proceedings;
- Complaints which fall outside the definition of bullying/harassment/sexual harassment which are processed through other agreed procedures e.g. the nationally agreed grievance procedure;
- Complaints of bullying/harassment/sexual harassment made by a student(s) against employees. Such complaints will be dealt with under the appropriate disciplinary procedures and/or child protection procedures;
- Complaints by parents. These will be dealt with through other relevant procedures.

Management will ensure that this policy is implemented in an effective and timely manner. It is important to note that availing of the processes in this policy in no way effects the complainants' right to make a statutory complaint under the Employment Equality Acts 1998 to 2015.

While it is a decision for the complainant as to whether s/he invokes this Policy or not, in most cases, the informal route and specifically mediation, is the preferred approach of ACCS (representing school management) and unions representing staff in the sector.

Whether formal or informal, a complaint must be made within six months of the latest incident(s) of alleged bullying/harassment/sexual harassment. In exceptional circumstances, the six-month time limit may be reviewed. The decision on whether to admit an allegation under this Policy outside of this time limit rests with the Principal[7].

Informal Procedure

Stage I – Informal Procedure using either:

1.1 Self-initiated attempt at informal resolution
1.2 Discussion with a contact person
1.3 Assisted attempt at informal resolution with the designated person
1.4 Mediation

1.1 Self-Initiated Attempt at Informal Resolution

An employee (the complainant) who feels that he/she may have been subjected to bullying/harassment/sexual harassment should immediately ask the person engaging in this behaviour (the respondent) to stop. It may be possible and sufficient for the complainant to explain clearly to the respondent that the behaviour in question is unwelcome, that it offends them or makes them uncomfortable and that it interferes with their work. A complainant should make an appointment and discuss the matter with the respondent with a view to resolving the complaint. In many situations this approach is effective, as direct communication between the complainant and the respondent (the "Parties") can help to build both understanding and awareness. It can often be the case that a person is not aware of their behaviour, that it is unacceptable or the impact which it has on the other person.

Resolution at this stage could involve an apology from one person to another and/or a clarification of the circumstances from one person to another and/or an agreement that the unacceptable behavior will not happen again.

[7] This will be the Chairperson of the Board of Management where the Principal is a party to the complaint.

1.2 Discussion with a Contact Person

In circumstances where the complainant finds it difficult to approach the respondent directly, he/she may discuss the situation with one of the school's Contact Persons. In this situation, the Contact Person should listen patiently, be supportive and discuss the various options with the complainant. It is to be noted that speaking to the Contact Person is not the same as making a formal complaint.

See further details on the role of the Contact Person in Appendix 1.

1.3 Assisted Attempt at Informal Resolution with the Designated Person (cannot be the Contact Person above)

If the matter is unresolved in Stage 1.1/1.2, the complainant may approach the school's Designated Person who shall be at Deputy Principal level[8].

The Designated Person will provide the complainant with this agreed Policy and advise him/her of the availability of the Employee Assistance Service.

The Designated Person will encourage the complainant and the respondent to engage in meaningful dialogue in an effort to resolve the matter or gain a level of agreement within 10 school days. The Designated Person in this instance could facilitate resolution by getting the Parties together or, alternatively, just speak to the alleged offender.

1.4 Mediation

If this does not resolve the issue, the Designated Person will consider whether the matter should be referred to mediation. If the Designated Person (having consulted with the Principal)[9], decides that mediation is appropriate, subject to the agreement of the Parties, a mediator will be organized by ACCS as soon as possible. In the first instance, the mediator will be a professional mediator from the Workplace Relations Commission (WRC), if available.

The use of mediation is strongly advocated as a process of resolving complaints by seeking to arrive at a solution through agreement between the Parties rather than proceeding to the formal procedure of investigation.

Mediation is particularly suited to workplace disputes where frequently the Parties will continue to work together into the future.

[8] If the Designated Person is a party to the complaint, the matter should be referred to the Principal. If the Principal is a party to the complaint, the matter should be referred to a designated member of the Board of Management.

[9] Unless the Principal is a party to the complaint.

The Mediation Process

Mediation is a voluntary, confidential process that allows two or more disputing parties to resolve their conflict in a mutually agreed way with the help of a trained mediator. The objective of mediation, which is available without making a formal complaint, is to resolve matters speedily and confidentially without recourse to a formal investigation. Mediation aims to minimise conflict and stress for the Parties.

While all matters related to the mediation process remain strictly confidential to the Parties themselves, the mediator will advise the Designated Person of the date the mediation concludes and whether the mediation was successful or not.

Points to note:
While a complainant is encouraged not to skip stages, he/she may decide, for whatever reason, to bypass the informal procedure. Choosing not to use the informal procedure should not reflect negatively on a complainant in the formal procedure.

Nothing in the informal procedures, including mediation, inhibits the complainant from invoking the formal procedures.

Employees should be aware that if an allegation is deemed sufficiently serious, it may be necessary to commence an investigation even if an employee is not prepared to proceed with a formal complaint.

Formal Procedure

Stage 2 - Formal Procedure – Initial Internal Examination

2.1 The complainant may refer the matter to the formal procedure:

- If the matter is unresolved in the informal stage;

or

- the employee wishes it to be treated formally;

or

- the alleged complaint is too serious to be dealt with in the informal procedure;

or

- the behaviour complained of continues after the informal procedure has been followed.

2.2 The complainant shall lodge the complaint with the Principal. If the Principal is a party to the complaint, a member of the Board of Management will replace the Principal in carrying out this role in the Formal Procedure. The complaint should be in writing, signed and dated. The complaint should be confined to precise details of the alleged incident(s) of bullying/ harassment/sexual harassment, including the dates of such incident(s). The Complainant will also furnish whatever supporting documentation she/he may wish to rely on to support his/her case.

2.3 The complaint will be subject to an initial examination by the Principal or where applicable a member of the Board of Management (where the Principal is a party to the complaint), with a view to determining an appropriate course of action. The respondent will be notified in writing of the nature of the complaint, given a copy of the allegation, informed of his/her right to be accompanied by a work colleague or an employee/trade union representative, if so desired, at any meetings with the Principal[10], that s/he will be given an opportunity to fully respond to the allegations and to present his/her own case.

2.4 The Principal[11] in progressing the complaint, may seek to ascertain whether a full and confidential investigation is the only way forward or, whether some other method might be recommended prior to initiating a full investigation of the complaint. In order for the complaint to be addressed in a way other than full investigation, the Principal[12] will consult with both/all Parties to the complaint. An appropriate course of action at this stage, for example, could be exploring a mediated solution or a view that the issue can be resolved informally. Should these approaches be deemed inappropriate or inconclusive, a formal investigation of the complaint will take place in accordance with Stage 3 of this Policy. The complainant will provide the names and contact details of witness(es) to specific incident/s (if any) in advance of the commencement of Stage 3 of this policy.

The process outlined above at 2.3 and 2.4 should be completed within a 30 working day timeframe. If both parties agree to mediation/informal resolution, the formal process will be put on hold until the outcome of mediation/informal resolution is known.

[10] If the Principal is a party to the complaint, a member of the Board of Management will replace the Principal in carrying out this role.

[11] If the Principal is a party to the complaint, a member of the Board of Management will replace the Principal in carrying out this role.

[12] If the Principal is a party to the complaint, a member of the Board of Management will replace the Principal in carrying out this role.

Stage 3 – Formal Procedure – External Investigation

3.1 The Principal[13] will recommend for the complaint to be investigated by an Investigator appointed from the panel established by the Office of Government Procurement (the "**Investigator**"). The Investigator will be appointed as soon as possible by the Board of Management. Following his/her appointment the Principal[14] will inform the Parties. The Principal[15] will refer the complaint and any relevant documentation, including the names of any witnesses, to the Investigator as soon as possible following receipt of the complaint.

The Parties may normally be accompanied by a work colleague or an employee/trade union representative if so desired at meetings conducted by the Investigator. As this is not a legal process, legal representation is not normally permitted at meetings. It will be a matter for the Investigator to determine in his/her sole discretion whether or not there are exceptional circumstances whereby a request by the respondent to have legal representation will be permitted. If the Investigator permits legal representation as provided for herein, the sample Terms of Reference in Appendix 2 will be deemed to be accordingly amended.

3.2 The investigation will be conducted in accordance with Terms of Reference, consistent with the sample Terms of Reference in Appendix 2 and this Policy.

3.3 The Investigator shall investigate the complaint and the investigation will be conducted thoroughly, objectively and with sensitivity. Confidentiality will be maintained throughout to the greatest extent possible, consistent with the requirements of a fair investigation, fair procedures, due process and with due respect for the rights of the Parties. The Investigator will meet with the Parties and any witnesses or relevant persons with a view to establishing the facts surrounding the allegation(s).

3.4 The Investigator will furnish a copy of the **draft Investigation Report** to the Parties. The Parties will be afforded the opportunity to propose specific amendments (in writing) on matters of fact to the draft Investigation Report. If the Parties choose to provide a written response/submission on matters of fact, same must be furnished to the Investigator within 10 school days[16] of the date the report was sent to the Parties.

---

[13] If the Principal is a party to the complaint, a member of the Board of Management will replace the Principal in carrying out this role.

[14] If the Principal is a party to the complaint, a member of the Board of Management will replace the Principal in carrying out this role.

[15] If the Principal is a party to the complaint, a member of the Board of Management will replace the Principal in carrying out this role.

[16] Unless both Parties agree otherwise.

3.5 The Investigator will then issue the **final written Investigation Report** (the "Investigation Report") to the Parties and to the Principal[17] determining whether the complaint has been upheld or not. This Report will be prepared in accordance with Appendix 3.

The Investigator shall make findings of fact and may make recommendations in his/her report pertinent to the issues raised. S/he will indicate whether the matter should be dealt with in accordance with the Disciplinary Procedure and if so, the stage of the Disciplinary Procedure.

Appeal Process

3.6 Either party may appeal the findings of the Investigation Report to a nominee of the Workplace Relations Commission (WRC). The appeal, which must be in writing, must be lodged with the Secretary to the Board of Management[18] **within 15 days of the issue of the Investigation Report** to the Parties and the ground(s) of appeal should be clearly stated in the appeal.

The appeal to the nominee of the Workplace Relations Commission is a procedural appeal and the sole ground on which an appeal can be taken is that the Investigator did not adhere to the Terms of Reference. The appeal is not to re-investigate the original complaint, rather, the nominee of the Workplace Relations Commission will consider the appeal on the ground(s) specified in the appeal provided it relates to an alleged failure by the Investigator to adhere to the Terms of Reference.

The Investigator may be required to make him/herself available to the nominee of the Workplace Relations Commission to clarify procedural matters.

The nominee of the Workplace Relations Commission will either dismiss the appeal, in which case the Investigation Report will stand or uphold the appeal, in which case a new Investigator will be appointed and the complaint will be investigated *ab initio* under the Formal Procedure.

[17] If the Principal is one of the Parties, the Investigation Report will issue to the Chairperson of the Board of Management.

[18] If the Principal is one of the Parties and is Secretary to the Board of Management, the appeal must be lodged with the Chairperson of the Board of Management.

Disciplinary Procedures

Should the Investigation Report uphold the complaint and direct that the matter be dealt with under the disciplinary procedures, any disciplinary action will be in accordance with the agreed disciplinary procedure which may lead to disciplinary sanctions up to and including dismissal.

Retaliation taken against an employee for making a bullying/harassment/sexual harassment complaint or against a witness is considered a disciplinary offence.

A vexatious and/or malicious complaint made by an employee will be dealt with through the disciplinary Procedures[19].

The Investigator shall, if required, make him/herself available in the event of disciplinary action being considered.

Support

The Parties will receive support in the short-term (for example, counselling or other intervention as appropriate) and regular review following the investigation[20]. All employees have access to the Employee Assistance Service.

Timeframe

It is crucial that the recommended timeframes be followed. Where situations arise where the timeframe needs to be changed, it will be done in consultation with the Parties.

Monitoring

This policy will be reviewed by the ACCS, and named unions on a regular basis in line with changes in the legislation, relevant case law and other developments. Furthermore, the Board of Management will monitor complaints of bullying/harassment/sexual harassment.

---

[19] As per the HSA 2007 Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work.

[20] As per SI 208/2012.

Communication/Training/Awareness

It is considered that all personnel who have a role in either the informal or formal procedure should be made aware of this Policy and other relevant policies and procedures, which should include appropriate training.

School management will make this Policy available to all employees in the school.

For further information contact:

Association of Community and Comprehensive Schools
10H Centrepoint Business Park, Oak Drive, Dublin 12.

Tel: 01 460 1150 Fax: 01 460 1203
E-mail: office@accs.ie
Website: www.accs.ie

Appendix 1

Contact Person(s)

Contact person(s) in a school environment are employees of the school who have volunteered and received training to be the point of first response for staff who need assistance in resolving an issue in the workplace relating to alleged affronts to personal dignity.

If possible, there should be more than 1 contact person in each school. The contact person(s) will normally not be a member of the senior management team.

The role of the Contact Person is to:

- Actively listen and provide support allowing the concerned staff member to speak about their experience.
- Provide the complainant with a copy of this Policy, explain the procedures, the various options available and help the person identify whether their complaint fits the definition of this Policy.
- Help the employee to clarify what s/he is experiencing and to empower the employee to decide what course of action, if any, s/he may wish to take.

The Contact Person:

- May not approach the alleged respondent/complainant on behalf of the person s/he is supporting.
- May not act as an advocate or representative on behalf of the person s/he is supporting nor can s/he direct the person as to the best course of action to take.

'The Contact Person has a listening brief and is a reference point for the complainant. S/he does not get involved in any other way in the complaints procedure and is not an advocate for either party' (HSA Code of Practice 2007).

The Contact Person will treat all discussions with persons who seek their support as completely confidential and will not be requested to disclose information to a third party. However, where the Contact Person believes that there is a potential risk to an employee, for example a threat to their health and/or safety, s/he may seek support from school management.

The list of trained contact person(s) is available on the staff noticeboard.

Appendix 2

Sample Terms of Reference for the conduct of a formal Investigation

The Investigator will:

1. Provide a Statement of Independence.
2. Investigate the complaint.
3. Conduct the investigation in accordance with the Protocol outlined below/ this Policy.
4. Afford fair procedures and natural justice to the Parties.
5. Issue an Investigation Report which makes findings of fact and which may make recommendations as provided for herein. The findings will be based on the evidence presented:
   - Provide rationale related to the evidence presented, for the finding/s in respect of each element of the complaint.
   - Determine whether each element of the complaint is upheld or not upheld.
   - Provide an overall finding concluding whether or not bullying/ harassment/sexual harassment occurred and the extent, if any, to which it occurred.
6. Indicate whether the matter should proceed to the Disciplinary Procedure and if so, the stage of the Disciplinary Procedure at which the matter should be dealt with.
7. Adhere to the timeframes in line with the Dignity at Work Policy and conduct the investigation as expeditiously as possible. Issue the Investigation Report to the parties to the complaint and to the Principal[21] no later than 90 working days from the date the service contract is signed. The time limit advised with respect to the 90 working days may be extended only in very extenuating circumstances subject to the discretion of the Board of Management and the Investigation company.
8. Operate within the agreed budget for the discharging of the investigation under the Contract for Services with the Board of Management of the school.

[21] If the Principal is one of the Parties, the Investigation Report will issue to the Chairperson of the Board of Management.

PROTOCOL FOR THE CONDUCT OF THE INVESTIGATION

This protocol should be followed. The dates on which meetings are convened and the order in which meetings are scheduled, rests with the Investigator but the sequencing of interviewing a complainant, complainant's witnesses, respondent, respondent's witnesses should be followed.

Scope of the Investigation

The investigation will cover the specific complaint/s made against the named respondent/s and will also address any further information/evidence which arises during the course of the investigation but solely in respect of the complaint.

A recording secretary shall accompany the Investigator at all meetings.

The Investigation will be conducted in line with this Policy

Investigation Process

The Complainant shall lodge the complaint which should be in writing, signed and dated. The complaint should be confined to precise details of the alleged incident(s) of bullying/harassment/sexual harassment, including the dates of such incident(s) and the names of any witness(es). The Complainant will also furnish whatever supporting documentation she/he may wish to rely on to support his/her case.

The Respondent will be furnished with the complainant's documentation, and with all other information upon which the Investigator may rely on in arriving at a decision, in advance of the meeting with the Investigator.

In the course of the Investigation, the Investigator will meet with the Parties and all witnesses.

Failure by any party to sign off on the Investigator's minutes of a meeting within the specified timeframe shall not in any way invalidate the record, prevent the record being exchanged with the other party or delay the Investigation in any way.

The Investigator will determine in his/her sole discretion whether to allow cross examination of the complainant and/or witnesses by the respondent. If so, these sample Terms of Reference will be deemed to be amended by the Investigator accordingly. Where the Investigator allows such cross examination to proceed, it will be on such terms as s/he deems fit, including but not limited to, who may conduct the cross examination.

The Parties may be accompanied by a work colleague or an employee/trade union representative, if so desired, at any meetings during the formal procedure. As this is not a legal process, legal representation is not normally permitted at meetings. It will be a matter for the Investigator to determine in his/her sole discretion whether or not there are exceptional circumstances whereby a request by the respondent for legal representation will be permitted. If the Investigator permits legal representation in accordance with this Policy, these sample Terms of Reference will be deemed to be amended by the Investigator accordingly.

Refusal or failure to co-operate with the investigation by any party will not prevent the Investigator(s) issuing the Investigation Report based on the information available.

Interviewing a complainant:

The Investigator will:

- Advise that the investigation will be conducted with due regard to confidentiality consistent with the requirements of a fair investigation, fair procedures, natural justice and due process;
- Ask the complainant to supply the name/s and contact details of any witness who has relevant information in relation to his/her specific complaint/s;
- Forward minutes of the investigation interview(s) to the complainant and provide an opportunity to propose specific amendments (to be submitted in writing) on matters of accuracy or fact to the minute;
- Indicate that the acceptance of any proposed amendments is a matter for the Investigator;
- Forward the final minute(s) of the meeting to the complainant.

Interviewing a witness:

The Investigator will:

- Invite the nominated witness to a meeting;
- Advise the witness that s/he is entitled to be accompanied by a work colleague or an employee/trade union representativeat the investigation interview/s but it would not be appropriate for such an accompanying

person to be a party to the investigation or another witness who will also be interviewed or making a statement during the course of the investigation;

- At the meeting, inform the witness that:
  - The investigation will be conducted with due regard to confidentiality consistent with the requirements of a fair investigation, fair procedures and natural justice.
  - A copy of his/her statement will be furnished to the Parties.
  - That s/he should not discuss the complaint or any details of it, the investigation or other related matters to the complaint with any other party.
- In setting the background to the complaint, witnesses should only be given sufficient information to allow the Investigator determine what occurred in relation to the allegation;
- The questions to be asked of the witnesses should include:
  - What precisely occurred?
  - Who was involved?
  - When the incident/s occurred?
  - Where the incident/s occurred?
  - Whether there were any other witnesses to the event/s?
- Forward the minute of the investigation interview to the witness and provide an opportunity to propose specific amendments (to be submitted in writing) on matters of accuracy or fact to the minute;
- The acceptance of any proposed amendments is a matter for the Investigator;
- Forward to the witness the final minutes of the witness' interview, setting out the basis on which any proposed amendments were rejected;
- Witness Conflicting Accounts: Where the Investigator is faced with two conflicting accounts of the alleged incident and where no witnesses are available or where their evidence is not persuasive, the case rests upon which version of events the Investigator considers the more credible. In such instances, the balance of probabilities will apply and a rationale must be provided;
- Should the Investigator become aware that any attempt has been made to persuade any witness to change his/her testimony, the matter should be reported immediately to the Chairperson of the Board of Management of the school;
- Any such interference is regarded as a serious breach of discipline and will be subject to disciplinary action.

Interviewing a respondent:

The Investigator will:

- Advise that the investigation will be conducted with due regard to confidentiality consistent with the requirements of a fair investigation, fair procedures, due process and natural justice;
- Ask the respondent to identify the name/s and contact details of any witness who has relevant information in relation to the specific complaint/s;
- Afford the respondent the opportunity to respond to the allegations and to state his/her case fully;
- Forward the minute of the investigation interview to the respondent and provide an opportunity to propose specific amendments (to be submitted in writing) on matters of accuracy or fact to the minute;
- The acceptance of any proposed amendments is a matter for the Investigator;
- Forward the final minute of the meeting to the respondent, setting out the basis on which any amendments proposed were rejected.

Further action:

On completion of all interviews, each party to the complaint will be provided with a copy of the minutes of all interviews conducted (including interviews with witnesses).

Draft Report

A draft Report will be prepared by the Investigator. The parties to the complaint will be afforded the opportunity to propose specific amendments (in writing) on matters of fact to the draft Investigation Report. These must be furnished to the Investigator within 10 school days[22] of the date the report was sent to the Parties.

Having considered the written submissions (if supplied), the Investigator will review and provide a rationale as to the acceptance or rejection of the items raised in a proposed submission on matters of fact. The decision to accept/reject such items in a submission from either party to the complaint is a matter for the Investigator.

[22] Unless both Parties agree otherwise.

Appendix 3

Final Investigation Report

- Once the Investigator has gathered all relevant information that is available, an analysis by the Investigator leading to conclusions must be performed;
- The Investigator should assess the credibility of each of the Parties and each witness and determine what is more likely to have occurred;
- On the findings of fact, the Investigator should then determine whether on the balance of probabilities what has happened constitute violations of applicable legislation and/or organisational policy;
- The Investigator may make recommendations as provided for herein;
- The Investigation Report must include, but is not limited to the following information, as appropriate to the specific circumstances:
  - Legal and policy basis of the investigation, as well as applicable professional standards;
  - Description of the Investigator's engagement and background of the complaint;
  - Statement of independence of the Investigator;
  - Summary of complainant's allegations;
  - Summary of respondent's response to allegations;
  - Listing of information gathered, including interviews held and documentation reviewed;
  - If any witnesses or leads provided by the Parties were not interviewed/pursued, an explanation as to why not;
  - Assessment of credibility for each party and each witness based on the balance of probability;
  - Other relevant information to be determined by the Investigator;
  - **Investigator's findings of fact;**
  - **Investigator's rationale in respect of each element of the complaint and determination and whether each element of the complaint is upheldor not upheld. In addition, an overall finding will be provided and a finding in respect of the extent to which, if any, bullying/ harassment/sexual harassment occurred.**
- The Investigator will indicate whether the matter should proceed to the Disciplinary Procedure and if so, what stage of the Disciplinary Procedure;
- The time limits advised may be extended only in very extenuating circumstances subject to the discretion of the Chairperson of the Board of Management.

St. Mary's Secondary School

Convent of Mercy, Newport, Co. Tipperary, V94 RY18

Telephone 061-378344 Email: admin@stmarysnewport.ie

www.stmarysnewport.com

Registered Charity Number: 20148379

Dignity at work

Policy and Procedure

Ratified without amendment

Board of Management meeting of 19th September, 2023

Signed _____

Chairperson, Board of Management

Date 19/09/2023

Signed _____

Principal, St. Mary's Secondary School

Date 19/09/2023