

Code of Practice for Dealing with Complaints of Sexual Harassment in VEC Workplaces

1 September 2006

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IRISH VOCATIONAL EDUCATION ASSOCIATION
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Acknowledgement

Supported by the VEC National Partnership Forum

VEC NPF Offices
McCann House
99 Marlborough Road
Donnybrook
Dublin 4
Tel 01 4969125
Fax 01 4969126
Email admin@vecnfpf.com
Website www.vecnfpf.com

The full range of unions representing staff of Vocational Education Committees and the Irish Vocational Education Association have jointly agreed this Code of Practice whereby inappropriate or unacceptable behaviour in schools, colleges, centres for education and places of work, is dealt with efficiently, effectively and fairly, through agreed procedures for the making of and dealing with allegations of sexual harassment.

This Code has evolved from a previous IVEA/TUI Code achieved through negotiation by a joint working group at national level and launched on 30 November 2000. The importance of extending the Code to represent all staff employed by Vocational Education Committees (VECs) has led to a process of further negotiation culminating in both the publication in 2002 and subsequent review of this Code which embraces the interests of IVEA, TUI, ASTI, IMPACT, AMICUS, SIPTU and Craft Unions e.g. TEEU, INPDU, UCATT and BATU.

VECs in partnership with unions are committed to ensuring that a healthy, positive and respectful environment is maintained throughout the schools, colleges, offices and centres for education under the remit of the VEC. The publication and subsequent review of this Code represents a significant milestone in achieving such a positive environment where personal dignity and integrity is respected and sexual harassment is understood by all as not to be tolerated.

To All Staff

The Irish Vocational Education Association (IVEA) and unions representing VEC staff subscribe fully to this Code of Practice and jointly are committed to creating an environment within every VEC that is free of sexual harassment and which promotes personal integrity and dignity. Unions and management have jointly agreed this Code to help promote such an environment in all VECs.

VECs recognise that sexual harassment can seriously damage working and social conditions for staff and students. This Code outlines behaviour that would be considered inappropriate or unacceptable and provides procedures for the making of and dealing with allegations related to the employment.

While all staff and students of VECs are responsible for creating a work and learning environment free of threat, sexual harassment and intimidation, particular responsibility lies with principals and management 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 environment. This process is an agreed industrial relations process and should not be understood to be a legal process. This Code (and complaints procedure) is negotiated as a matter of policy for VECs to be formally adopted and implemented by individual VECs.

Introduction

Trade Unions representing VEC staff and Co. Galway VEC are committed to ensuring a workplace environment that 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 specify 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.

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

- Sexual harassment of one staff member by another staff member; one student by another student; or one staff member by a student will not be tolerated and is contrary to school and VEC policy.
- Sexual harassment of a student by a staff member will not be tolerated and constitutes a serious abuse of authority.

In cases of sexual harassment, the primary issue is the effect on the victim, not the intention of the alleged perpetrator.

Any allegation 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, terms and conditions of employment.

Prevention

The best way to eliminate sexual harassment in the workplace is to foster an environment which discourages such behaviour. All staff have an important role in creating an environment where such behaviour is unacceptable. 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, staff should make clear to others that sexual harassment is unacceptable and should support colleagues suffering from sexual harassment. Staff also have a role to play in adhering to the policies and procedures as may be laid down from time to time.

All management personnel have a particular responsibility to ensure that the workplace is kept free from all forms of sexual harassment so that staff may go about their work free from threat or intimidation. As in all matters of discipline, safety and welfare, it is primarily the responsibility of management personnel to establish

and sustain proper standards in the workplace. VEC management will respond promptly to allegations of sexual harassment and will deal with all allegations in an expeditious and supportive manner.

Attempts should be made to resolve allegations of sexual harassment informally in the first instance. A party to a complaint may suggest the engagement of mediation, which may be engaged by agreement. If these are not possible, or if the person being sexually harassed so elects, the Formal Procedure will be invoked. It is advisable for the victim of sexual harassment to keep notes detailing times and dates of incidents and request witnesses, if any, to note them also.

What is Sexual Harassment?

Definition of Sexual Harassment

Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature 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. It can consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material¹.

Such behaviour fails to respect the dignity of others and impacts upon the staff member, the workplace, or otherwise in the course of his/her employment². It can be a single incident or more than one incident that any reasonable person finds hostile, intimidating or humiliating. The impact of sexual harassment can be devastating: it can affect a person's work performance, health and personal life outside of work. The intent

of the alleged perpetrator(s) shall not be relevant in determining whether the behaviour is acceptable.

Sexual harassment 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.

This Code of Practice is designed to deal with cases of sexual harassment coming within categories of verbal, non-verbal or physical conduct of a sexual nature and is not designed to deal with those cases coming under the category of physical sexual assault which would, if proven, amount to criminal wrongdoing.

¹ Section 11(5), Equal Status Acts, 2000 to 2004 & Section 14A(7), Employment Equality Acts, 1998 and 2004

² Definition of 'workplace' - Section 14A(1)(a), Employment Equality Acts, 1998 and 2004

Procedures for Dealing with Allegations of Sexual Harassment in VEC Workplaces

Purposes of the Procedure

- To provide a fair, consistent and expeditious mechanism to process allegations of sexual harassment that complies with Codes of Practice issued by the Equality Authority and relevant legislation/statutory instruments.
- 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 allegations of sexual harassment being made against staff.

Specifically this procedure may be utilised:

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

Exclusions

- Allegations of sexual harassment made by staff against students. Such allegations will be treated in accordance with the appropriate student Code of Discipline/Behaviour/ agreed procedure.
 - referred to the Department of Education and Science for investigation under the terms of circular letter 43/85.
- Anonymous allegations.
- Allegations which are the subject of legal proceedings or claims for redress under statutory provisions.
- Allegations that are unrelated to employment.
- Matters of the professional competence of teachers which cannot be dealt with at school/ college/centre level or which are

Note 1

Claims of sexual harassment as defined under the terms of the Equal Status Acts, 2000 to 2004 and Employment Equality Acts, 1998 and 2004, may be taken under the provisions of relevant sections of the Acts.

Note 2

It is recognised that staff may experience sexual harassment from other persons calling to schools/colleges/centres/offices of the VEC. VECs are committed to endeavouring to protect their staff from potential incidents arising. In the event however that allegations of harassment are made, one should immediately report such incidents to one's line manager. VEC management will respond promptly and deal appropriately with all allegations in an expeditious and supportive manner.

Note 3 *All evidence presented must be presented in accordance with the rules of fair practice and the law (e.g. CCTV footage, electronic imaging etc.).*

Informal Procedure

Where possible and without prejudice to the right of the individual to invoke the Formal Procedure, every effort should be made to address allegations of sexual harassment by Informal means. This is likely to produce solutions that are speedy, effective and minimise embarrassment and the risk of breaching confidentiality.

To encourage and support the use of the Informal approach, each VEC will ensure that it has a panel, agreed with unions representing VEC staff, of suitably trained Designated Facilitators who can be called upon to act on behalf of person(s) who believe they have been subjected to sexual harassment. All contact between Designated Facilitators and person(s) making an allegation (complainant(s)) or person(s) against whom an allegation(s) are made (subject(s) of a complaint), will be carried out on a strictly confidential basis. All contact between Designated Facilitators and persons making an allegation (complainants) or persons against whom allegations are made (subject(s) of a complaint), will be carried out on a strictly confidential basis.

In dealing with allegations of sexual harassment through the Formal Procedure it will be expected that, with the exception of very grave situations, there has been a genuine attempt to resolve grievances through the Informal Procedure in the first instance. The time periods specified herein are the norm, save in exceptional circumstances (i.e. the approach of a holiday period) where different arrangements can be made, subject to the consent of both parties.

Informal Procedure – Stage 1

A staff member who believes that s/he has, or is being sexually harassed, should make an appointment to discuss the matter with the alleged harasser(s). At the meeting, s/he should explain clearly that the behaviour in question is unwelcome, that it offends them, or makes them uncomfortable and that it interferes with their work and they should ask that this behaviour stops immediately.

Informal Procedure

Informal Procedure – Stage 2

If the complainant feels that s/he cannot directly address the subject(s) of the complaint, s/he should seek a meeting with a Designated Facilitator to discuss the matter. Following this meeting, the Designated Facilitator will normally agree to meet the subject of the complaint, on behalf of the complainant, with a view to resolving the matter or; in some circumstances, the matter will be referred to stage 3 of the Informal Procedure.

The procedures at stage 2 should be concluded within **5 working days** of the meeting with the Designated Facilitator.

Informal Procedure – Stage 3

If the matter is unresolved at stages 1 or 2, or if the complainant and the Designated Facilitator believe the behaviour complained of is of such a nature that it should be reported immediately, they should approach the Deputy Principal in a school/college or a member of the senior management

team in a centre other than a centre/ office, requesting that the Deputy Principal or Senior Manager use his/her best offices to resolve the complaint through an informal process as in stage 2. If the Deputy Principal or Senior Manager is a party to the complaint, another agreed person shall be appointed to this position.

The procedure at stage 3 should be concluded within **5 working days** of the meeting with the Deputy Principal or Senior Manager.

Formal Procedure

Stage 1 - Investigation by Principal/Head of Centre

If the issue is not resolved through the Informal Procedure, or if the staff member so elects, the complainant should lodge the allegation in the first instance, in writing, with the Principal in a school/college or the Head of a Centre other than in a school/college. Where a Principal, Deputy Principal, or a person in a category of employment reporting directly to the CEO of a VEC, or a Head of Centre, is a party to the complaint, an allegation shall be investigated by a person nominated by the employer from a panel agreed by the parties to this agreement.

Where a CEO is a party to the complaint, an allegation shall be investigated by a person from the agreed national panel of experts nominated by the IVEA with the agreement of both parties.

Investigations of any allegation will be handled with sensitivity and with due respect to both the complainant and the subject of the complaint. It is understood that all allegations will be investigated with minimum delay.

Whilst it is anticipated that all parties

concerned will co-operate fully with the investigation, failure by any party to co-operate will not prevent the processing of an investigation to conclusion. The Principal/Head of Centre will conduct the investigation as follows:

- a) The staff member(s) complained of, will be given a copy of the written complaint and invited to give their written response(s).
- b) Any further necessary investigations, for example interviewing of witnesses named by the complainant or the subject of the complaint, will be carried out.
- c) Meeting(s) will be arranged with all the parties (either separately or jointly) with a view to resolving the complaint. Such meeting(s) should take place within **10 working days** of receipt of the written allegation.

Complainants and subjects of a complaint may be represented by one/two colleague(s) or person(s) of their choice throughout this process. If the matter is resolved to the satisfaction of all parties concerned, the Principal/Senior Manager shall confirm this in

Formal Procedure

writing to all parties to the complaint and indicate that the matter is concluded.

In all other cases, the Principal/Head of Centre shall convey his/her findings in writing to all the parties within **10 working days** of concluding the investigation. This notification shall indicate whether the allegation is deemed to be upheld, unfounded, or unfounded and malicious. In cases where allegations have been made against more than one person, a separate finding, in writing, will issue in respect of each person against whom an allegation is made.

Complainants and subjects of a complaint will be informed of their right to appeal the findings of the Principal or Head of Centre to a Complaints' Consideration Committee. Appeals, if submitted, must be marked **'private and confidential for the attention of the Head of Human Resources or the Head of Administration of the VEC'** and

submitted within **15 working days** of receipt of the findings at Stage 1.

Formal Procedure

Stage 2 - Appeal to a Complaints' Consideration Committee

On receipt of an appeal against the findings of a Principal/Head of Centre, the Head of Human Resources or the Head of Administration shall establish a Complaints' Consideration Committee to investigate the matter at stage 2 of the Formal Procedure. Appeals at Formal Procedure stages 2 and 3 are to be heard and/or processed (with the exception of providing for administrative support), by an individual who has had no prior involvement in any previous stage of the complaint.

The Complaints' Consideration Committee established will normally consist of three persons: a nominee of management, a nominee of the relevant union and an independent Chairperson agreed between both management and union. However, where more than one union is involved in the allegation, each union will be invited to make a nomination to this Committee. The Committee in these circumstances will, in addition to the Chairperson, consist of an equal number of union and management nominees. The Committee may, at

its discretion, be assisted by a person drawn from an agreed national panel of experts established through agreement between unions and the IVEA.

The Complaints' Consideration Committee (CCC) will conduct the investigation as follows:

- a) The Chairperson of the CCC will request the Principal/Head of Centre to provide him/her with full report of the investigation at stage 1 together with any supporting documentation.
- b) The Chairperson will arrange a preliminary meeting of the CCC to consider the report and supporting documentation.
- c) This preliminary meeting will take place directly in advance of the main hearing. Both the preliminary meeting and the main hearing should convene no later than **15 working days** from the date of lodgement (by the Principal/Head of Centre) of the complaint with the Chairperson of the CCC.

Formal Procedure

d) The CCC will provide the complainant(s) and subjects of a complaint with the full report of the investigation at stage 1 together with any supporting documentation.

e) The Chairperson will invite each party to make a formal presentation of his/her appeal to the CCC.

f) The CCC will consider any new evidence arising from the presentation of appeals by the parties.

g) The CCC will carefully consider all evidence and submissions at its disposal.

h) When the CCC has completed its deliberations, the Chairperson shall convey the findings of the CCC, in writing, to the subject(s) of the

complaint and the complainant(s), within **5 working days** of the findings being set down.

Complainants and the subjects of a complaint may be represented by a colleague or another person of their choice throughout this process.

The decision of the CCC will be referred to the Chief Executive officer (CEO) of the VEC for consideration and decision. This measure will complete the internal process as set out in this procedure.

The CEO's decision will be conveyed by registered post, to the parties within **10 working days**. The CEO will set out the right of appeal to the independent third party and supply contact details for same.

Note 1

Confirmation of the name of the person representing the complainant and subject of the complaint should be advised to the Chairperson of the CCC no later than **three days** prior to the date of the hearing (in (d) above) of the CCC.

Note 2

As is fundamental to the rules of natural justice and fair procedure, the complainant and subject of the complaint and his/her respective representative, may present at the hearing.

Formal Procedure

Stage 3 - Appeal to an Independent Third Party

Following on from the completion of the internal process, an aggrieved party will have the right of appeal to an independent third party. This appeal should be lodged, in writing, within 15 working days.

The decision of the independent third party will be referred to the CEO (for implementation).

Note 1 (Reference '15 working days')

That such notice shall be deemed to have been duly served if such notice shall have been sent by ordinary pre-paid post and shall be deemed to have been received on the day in which it ought, in due course of post, to have been delivered.

Disciplinary Action

It is expected that all persons will conduct themselves in a reasonable and respectful manner at all times. If at any stage during the procedure as set out above, the conduct of any of the parties could be construed as serious/gross misconduct, a separate disciplinary hearing within the terms of the relevant disciplinary code for the staff concerned may be initiated. In this context, certain types of sexual harassment and false or malicious allegations, victimisation of complainants or intimidation of witnesses, will be investigated and can under the relevant appropriate procedure, become grounds for disciplinary action up to and including dismissal.

In the event that the process determines that an initial complaint was vexatious and or malicious, the matter may be referred for investigation under the appropriate disciplinary procedure.

Counter complaints will be dealt with as a distinct and separate allegation under the Codes.

Protection and Support

Staff shall be protected from intimidation, victimisation or discrimination for filing an allegation of sexual harassment or assisting in an investigation. Retaliation against a member of staff for complaining about sexual harassment is considered a disciplinary offence.

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 may be made available by the VEC. Persons who sexually harass others may be requested to attend counselling to prevent further incidents of sexual harassment occurring.

Record Keeping

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

- The investigation undertaken.
- All communications to/by the complainant, the subject(s) of the complaint and the Investigating Officers/Committees at each stage of the procedure.
- The steps and all the decisions taken.

Where an allegation 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 allegation 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.

Application, Adoption and Review

Application Date

The official implementation date is 1 September 2006 to replace the previous published version dated 2002.

VEC Adoption Date

This “*Code of Practice for Dealing with Allegations of Sexual Harassment in VEC Workplaces*” has been formally adopted by Co. Galway VEC on 23 January 2007.

Signature:

Seosamh Mac Donncha
Chief Executive Officer

Review

The necessity to review this Code will be considered by the parties to this agreement, one year from the official implementation date of 1 September 2006.

For further information contact:

NOTES

Irish Vocational Education Association (IVEA)

McCann House, 99 Marlborough Road,
Donnybrook, Dublin 4
Tel 01 4966033/4966248
Fax 01 4966460
Email info@ivea.ie
Website www.ivea.ie

Association of Secondary Teachers, Ireland (ASTI)

ASTI House
Winetavern Street, Dublin 8
Tel 01 6719144 / 6040160
Fax 01 6719280
Email info@asti.ie
Website www.asti.ie

Teachers' Union of Ireland (TUI)

73 Orwell Road
Rathgar, Dublin 6
Tel 01 4922588/4922510
Fax 01 4922953
Email tui@tui.ie
Website www.tui.ie

Services, Industrial, Professional & Technical Union (SIPTU)

Liberty Hall
Eden Quay, Dublin 1
Tel 01 8586383
Fax 01 8749115
Email mmerrigan@siptu.ie
Website www.siptu.ie

IMPACT Trade Union

Local Government, Education & Local Services Division
Nerney's Court, Dublin 1
Tel 01 8171500
Fax 01 8171501
Email msimpact1@eircom.net
Website www.impact.ie

AMICUS

15 Merrion Square, Dublin 2
Tel 01 6611063
Fax 01 6611738
Website www.amicustheunion.org

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