
5.3 Code of Practice for Dealing with Complaints of Bullying and Harassment

To All Staff

County Donegal Vocational Education Committee 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 bullying and 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.

County Donegal Vocational Education Committee recognises that bullying and 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, 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. Donegal VEC are committed to ensuring a workplace environment that is characterised by mutual respect, tolerance and affirmation.

Harassment and bullying is behaviour that is destructive to a positive working atmosphere and will not be tolerated. VEC staff have the right to work in an environment free from any form of harassment, bullying or intimidatory behaviour.

If someone experiences offensive behaviour and makes an allegation through the procedure that follows, s/he will be protected from any victimisation resulting from the allegation. Breach of this policy on bullying and harassment may be grounds for disciplinary action ranging from a verbal warning up to and including dismissal for serious offences.

Bullying and harassment are not 'new', nor is the behaviour that they describe. What is perhaps 'new' is the use of the words in the context of work and the recent recognition of the adverse effects of such behaviour on the victim and the organisation in which s/he works. Staff working in a climate of fear and resentment cannot give of their best. The adverse effects of bullying are manifest in increased absenteeism, low morale, poor performance levels and increased staff turnover. The learning institution may suffer a loss of effectiveness and creative input. It is also possible that the image and wider reputation of the school, college, centre or office will suffer if the situation results in legal proceedings. In cases of bullying and harassment, the primary issue is the effect on the victim, not the intention of the alleged perpetrator.

Harassment undermines the confidence and dignity of the individuals affected by it. It poisons the work atmosphere when tolerated or accepted as the norm. Harassment and bullying can occur in any kind of workplace and this policy aims to inform VEC staff as to their rights and responsibilities.

Prevention

The best way to eliminate bullying/harassment in the workplace is to foster an environment which discourages such behaviour. All staff have an important role in creating an environment where bullying/harassment 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 bullying/harassment is unacceptable and should support colleagues suffering such treatment. 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 harassment and bullying so that staff may go about their work free from the threat of harassment 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 harassment or bullying and will deal with all allegations in an expeditious and supportive manner.

Attempts should be made to resolve allegations of bullying/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 harassed so elects, the Formal Procedure will be invoked. It is advisable for the victim of bullying and harassment to keep notes detailing times and dates of incidents and request witnesses, if any, to note them also.

Definition of Bullying and Harassment

Bullying can be defined as a destructive and malicious attempt to target a particular individual or individuals. It should not be confused with:

- Workplace inter-personal conflicts which may, in themselves, be damaging and stressful but which do not necessarily constitute bullying.
- The reasonable conduct of their responsibilities by school/college/centre/office management staff.
- Industrial relations difficulties, which should be handled using the appropriate industrial relations procedures.

Bullying and harassment is behaviour that is unprovoked, unwelcome, persistent and is intimidatory or offensive to the recipient. It can take the form of verbal, physical or psychological attack and can be openly aggressive or subtle. Generally, bullying and harassment is taken to mean repeated and persistent behaviour. The impact of bullying and harassment can be devastating: it can affect a person's work performance, health and personal life outside of work.

Bullying is frequently perceived to be a personnel problem between management and staff. However, bullying can occur between any members of staff. A 'bully' may pick on one person or may turn his/her attention onto a group. A 'bully' may bully a colleague or someone senior to him/her. Groups can bully individuals or other groups. In addition, the bullying of one student by another, while not specifically dealt with in this document, is a serious offence and should be dealt with under the Code of Discipline/Behaviour within schools/colleges/centres.

While the following examples of bullying and harassment are not exhaustive, it is important to be mindful of the fact that if a person behaves inappropriately to another, and the victim can make a case that injury has been caused, then in such instances harassment may be deemed to exist.

Bullying can include:

- Open aggression, threats, shouting, abuse or obscenities; directed towards a colleague.
- Horseplay, offensive gestures and unwanted physical contact.
- Derogatory or offensive nicknames.
- Subjecting a colleague to constant humiliation, sneering, ridicule or using a person as a constant butt of jokes.
- Maligning or spreading malicious gossip about a colleague.
- Subjecting a colleague to unreasonable scrutiny with persistent unwarranted criticism about minor matters.
- Undermining a person's authority, work or achievements.
- Removing, for no justifiable reason, areas of work responsibility from an individual.
- Setting impossible and unreasonable objectives for a staff member, or constantly changing the work requirements without telling him/ her and criticising or reprimanding him/her for not meeting these objectives or requirements.
- Deliberately withholding information that a staff member needs to do his/her job effectively.
- Shunning or marginalising a colleague, excluding him/her from discussions, decisions etc. or refusing to deal directly with him/ her in the workplace.
- Deliberately blocking another staff member's development.

Procedures for Dealing with Allegations of Bullying and Harassment in VEC Workplaces

Purposes of the Procedure

- To provide a fair, consistent and expeditious mechanism to process allegations of bullying and 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 bullying and harassment being made against staff.

Specifically this procedure may be utilised:

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

- Allegations of bullying/harassment made by staff against students. Such allegations will be treated in accordance with the appropriate student Code of Discipline/ Behaviour.
- Allegations of bullying/harassment made by a student(s) against a staff member will be dealt with under appropriate guidelines and/ or other agreed codes of practice.
- Matters of the professional competence of teachers which cannot be dealt with at school/college/centre level or which are referred to the Department of Education & 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.

Note 1

Claims of harassment under the nine grounds set out in the Equality Acts, 1998 - 2007, may be taken under the provisions of that Act. The Acts define these grounds as follows:

- Gender
- Age
- Disability
- Marital Status
- Family Status
- Race
- Sexual Orientation
- Religion
- Membership of the Traveller Community

Note 2

It is recognised that staff may experience bullying and 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 bullying and/or 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 bullying/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 persons who believe they have been subjected to bullying or harassment. All contact between Designated Facilitators and person(s) making a complaint (complainant(s)) or person(s) against whom an allegation is made (subject(s) of a complaint), will be carried out on a strictly confidential basis. All contact between Designated Facilitators and persons making a complaint (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 bullying/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 bullied or 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 - 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/office other than a school/college, 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 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.

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 a 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.
- d. The CCC will provide the complainant(s) and the subject(s) 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 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.

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: (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 bullying/harassment (e.g. bullying/harassment of a violent/abusive nature, false or malicious allegations of bullying/harassment, 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 bullying and harassment or assisting in an investigation. Retaliation against a member of staff for complaining about bullying/harassment is considered a disciplinary offence.

Assistance in the event of Harassment

Every effort will be made to assist, if they so wish, persons who are victims of bullying/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 bully/harass others may be requested to attend counselling to prevent further incidents of 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.