2025

Anti-Bullying Policy

MARIST COLLEGE ATHLONE

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JMB, ASTI, TUI and FÓRSA are committed to working together to maintain a workplace environment that encourages and supports the right to dignity and respect in the workplace. This Anti-Bullying Policy (hereafter the "Policy") has been agreed between the aforementioned parties and is the agreed Policy for use in Voluntary Secondary Schools.

1. Policy Statement

Marist College is committed to providing a safe working environment where employees are treated with dignity and respect in an environment which is free from all forms of bullying.

This Policy has a strong preventative focus, emphasising the duties of all employees to create and maintain a working environment in which everyone is treated with dignity, courtesy and respect and where diversity is valued. Where complaints of bullying occur, the Policy aims to ensure that all parties will be treated with fairness, sensitivity, respect and confidentiality, and with due regard to the rights of all parties.

The Policy recognises the importance of early intervention in managing complaints of bullying. A key objective is to ensure that all reasonable efforts are made to deal with complaints at local level, informally where appropriate. The Policy promotes mediation as an essential tool in resolving complaints. Mediation is a voluntary process that can be entered into at any stage of the complaints management process and will be actively encouraged from the earliest stage possible where appropriate.

The Policy provides a framework in which complaints of bullying will be taken seriously and will be followed through to resolution. Employees who make complaints and who support such employees will not be victimised. Where it is established that a person accused of bullying has a case to answer, appropriate action will be taken which may include disciplinary action or other appropriate sanctions.

Vexatious or malicious complaints may lead to disciplinary action or other appropriate sanctions.

2. Background and Context

It is widely recognised that bullying can have a devastating effect on those subjected to such behaviours. Workplace bullying can undermine staff morale and result in absenteeism, stress-related illness, employee turnover and litigation.

The Safety, Health and Welfare at Work Act 2005 obliges an employer to provide, as far as is reasonably practicable, a safe working environment which is free from bullying. Schools are reminded of their obligation to prepare a Safety Statement under section 20 of the 2005 Act based on an identification of the hazards to safety, health and welfare at the place of work, an assessment of the risks involved and setting down the preventive measures necessary to protect safety, health and welfare.

This Policy is an essential tool in meeting the school's statutory health and safety obligations with regard to preventing and managing risks associated with the hazards of bullying in the workplace. Employers and employees have specific duties under the Safety Health and Welfare at Work Act 2005 directly or indirectly related to preventing, managing and controlling the risks arising from bullying.

This Policy is based on The *Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work* (2021) (hereafter the "Code") developed by the Health and Safety Authority (HSA) and the Workplace Relations Commission (WRC).

(This Code replaces and updates the *Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work*, which was issued by the HSA in 2007 and the *Code of Practice Detailing Procedures for Addressing Bullying in the Workplace* by the then Labour Relations Commission, now WRC, in 2002.)

The Code retains the core definition of bullying as outlined in the previous codes and provides updated guidance which is reflective of developments in the caselaw on bullying. The Code highlights that behaviour can be either bullying or harassment but cannot be both as these are two legally distinct concepts. This Policy addresses behaviours which come within the definition of workplace bullying only. The Policy does not extend to harassment or sexual harassment under the Employment Equality Acts 1998-2015, which are addressed in the school's Harassment and Sexual Harassment Policy.

The Policy emphasises the importance of assessing each complaint on its own merits in order to determine the most appropriate way of addressing a complaint. This may be under the initial informal or secondary informal stage, through mediation, or through the formal procedure.

3. Scope

This Policy extends to bullying by employees, including students on teaching placement,

- At the workplace.
- Outside of the workplace during the course of employment, such as on school trips, and at work-related events or social functions.

Nothing in this Policy limits the rights of school management to investigate any matter which relates to bullying, in circumstances other than where a complaint has been made.

This Policy does not apply to:

Complaints of bullying made by employees against students. Such complaints will be dealt with in accordance with the school's Code of Behaviour;

Matters of the professional competence of teachers, which are dealt with in accordance with Department of Education Circular Letter 0049/2018;

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 subject to criminal investigation by An Garda Siochana;

Complaints which fall outside the definition of bullying which may be addressed through other agreed procedures, for example, the Harassment and Sexual Harassment Policy or the appropriate grievance procedure;

Complaints of bullying, made by a student(s) against employees. Such complaints may 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;

Anonymous complaints.

4. Definitions

4.1 What is 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 be reasonably 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]

"**Workplace Bullying** should meet the criteria of an on-going series of accumulation of seriously negative targeted behaviours against a person or persons to undermine their esteem and standing in a harmful, sustained way. Bullying behaviour is offensive, on-going, targeted and outside any reasonable norm. A pattern and trend are involved so that a reasonable person would regard such behaviour as clearly wrong, undermining and humiliating. It involves repeated incidents or a pattern of behaviour that is usually intended to intimidate, offend, degrade, or humiliate a particular person or group of people - but the intention is not important in the identification process."[2]

It is recognised that bullying at work can involve employees in many different work situations and at all levels across the organisation.

Workplace bullying can include conduct offensive to a reasonable person, for example oral or written slurs, physical contact, gestures, jokes, displaying pictures, flags/emblems, graffiti, or other material that state/imply prejudicial attitudes that are offensive to fellow employees.

The Code states that behaviour which makes for a bullying pattern will likely include not just one but a range of the following examples:

- Exclusion with negative consequences;
- Verbal abuse/insults;
- Being treated less favourably than colleagues in similar roles;
- Belittling a person's opinion;
- Disseminating malicious rumours, gossip, or innuendo;
- Socially excluding or isolating a person within the work sphere;
- Intrusion – pestering, spying, or stalking;
- Intimidation/aggressive interactions;
- Excessive monitoring of work;

[1] As defined, with emphasis, in SI No 674 of 2020, Industrial Relations Act 1990 (Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work) Order 2020

[2] SI No 674 of 2020, Industrial Relations Act 1990 (Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work) Order 2020, p.11

- Withholding information necessary for proper performance of a person's job;
- Repeatedly manipulating a person's jobs content and targets;
- Blaming a person for things beyond their control;
- Use of aggressive an obscene language;
- Other menacing behaviour.

This list is not exhaustive.

Cyberbullying and Cyberharassment

Any reference to bullying throughout this Policy shall include cyberbullying and cyberharassment. Cyberbullying or cyberharassment is a form of bullying or harassment carried out through the use of cyber, digital, or electronic means, including, but not limited to, computers, tablets, mobile phones, game systems and other devices. Cyberbullying and cyberharassment can occur through SMS, texts, and apps, or online via social media posts, forums, or gaming where people can view, participate in, or share content. Examples of cyberbullying and cyberharassment include sending, posting, or sharing negative, harmful, false, or mean content about another person. It can include sharing personal or private information about someone else, causing embarrassment or humiliation or the impersonation of another person. The most common places where cyberbullying occurs are:

- Social Media, such as Facebook, Instagram, Snapchat, and Tik Tok
- Text messaging and messaging apps on mobile or tablet devices
- Instant messaging, direct messaging, and online chatting over the internet
- Online forums, chat rooms, message boards and gaming

4.2 What is not bullying at work?

It is important to distinguish bullying from other inappropriate behaviours or indeed appropriate workplace engagement. As set out in the definition above, a once-off incident of bullying behaviour may be an affront to dignity at work and may be unsettling but does not of itself make for an adequate level of distress as to fall within the definition of bullying. Other remedies should be sought for these scenarios. As a once-off, such behaviours cannot be presumed to be done in a targeted, purposeful and unremitting way.

Apart from once-off behaviours, other on-going behaviours which may upset or unsettle a person may not come within the bullying definition either. Behaviour considered bullying by one person may be considered routine interaction by another, so the "reasonableness" of behaviours over time must be considered. Disrespectful behaviour, while not ideal, is not of itself bullying. Conflicts and disagreements do not, of themselves, make for a bullying pattern either. There are various workplace behavioural issues and relationship breakdowns which may be troubling, upsetting and unsettling but are not of an adequate level of destructiveness to meet the criteria required for a bullying complaint.

Objective criticism and corrections that are intended to provide constructive feedback to an employee are not usually considered bullying but rather are intended to assist the employee with their work.

Bullying does not include:

- An isolated incident of inappropriate behaviour, which may be an affront to a person's dignity at work, but as a once-off incident, is not considered to be bullying;
- Expressing differences of opinion strongly;

- Offering constructive feedback, guidance, or advice about work-related behaviour which is not of itself welcome;
- Ordinary performance management, including fair and constructive criticism and/or feedback in relation to an employee's performance, conduct or attendance;
- Reasonable corrective action taken by an employer or supervisor relating to the management and direction of employees (for example managing an employee's performance, taking reasonable disciplinary actions, or assigning work);
- Workplace conflict where people disagree with, or disregard the other's point of view;
- Complaints relating to reasonable instructions issued by management, including the assignment of normal duties, or relating to terms and conditions of employment.

This list is not exhaustive.

4.3 What is Harassment?

Harassment that is based on any of the following grounds of gender, civil status, family status, sexual orientation, religious belief, age, disability, race, or membership of the traveller community (the "prohibited grounds") is a form of discrimination in relation to conditions of employment.

Harassment is defined in section 14A(7) of the Employment Equality Acts 1998-2015 ("EEA") as any unwanted conduct related to any of the prohibited grounds that has the purpose or effect of violating a person's dignity at work and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

The conduct at issue may not be specifically directed at a particular employee but may nevertheless have the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for that person. It is the effect of the behaviour on the recipient, rather than the intention of the alleged harasser, which is relevant.

Unwanted conduct based on one of the prohibited grounds may be harassment even if the person does not have that relevant characteristic, but where the perpetrator believes that the employee does. For example, where the perpetrator believes that the employee is gay and the employee is not, or where the perpetrator believes the employee has a particular disability and the employee does not.

The unwanted conduct may consist of acts, requests, spoken words, gestures, or the production, display or circulation of written words, pictures, or other material.[3]

Unlike bullying, a single incident may constitute harassment.

The *Code of Practice on Sexual Harassment and Harassment at Work* provides the following non-exhaustive list of examples of harassment:

- Verbal harassment - jokes, comments, ridicule, or songs;
- Written harassment - including graffiti, text messages, emails, social media, or internet posts;
- Physical harassment - jostling, shoving or any form of assault;
- Intimidatory harassment - gestures, posturing or threatening poses;
- Visual displays such as posters, emblems, or badges;

[3] Section 14A(7)(a) and (b) of the Employment Equality Acts 1998 - 2015

- Excessive monitoring of work;
- Isolation or exclusion from social activities; and
- Unreasonably changing a person's job content or targets.

This list is not exhaustive.

Please refer to the school's Harassment and Sexual Harassment Policy for information on how to address a complaint of harassment.

4.4 What is sexual harassment?

Sexual harassment is defined in section 14A(7) of the EEA as any form of verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

The conduct at issue may not be specifically directed at a particular employee but nevertheless 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 is the effect of the behaviour on the recipient, rather than the intention of the alleged harasser, which is relevant.

Many forms of behaviour can constitute sexual harassment. A single incident may constitute sexual harassment. The *Code of Practice on Sexual Harassment and Harassment at Work* provides the following non-exhaustive list of illustrative examples of sexual 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 contact, continued suggestions for social contact outside the workplace after it has been made clear that such suggestions are unwelcome, unwanted or offensive, suggestive remarks, innuendo or lewd comments, graffiti, written materials, emails, text messages or social media posts;
- Non-verbal conduct of a sexual nature - This may include the display of pornographic or sexually suggestive pictures or objects. It may also include stalking, indecent exposure, leering, whistling, or making sexually suggestive gestures; and
- Gender-based conduct - This includes conduct that denigrates or is abusive of an employee for reasons related to their sex such as derogatory or degrading abuse or insults which are gender-based. This might include conduct that insults or degrades an employee because they are pregnant or because they are transgender.

The examples stated in this Policy are not an exhaustive list.

Please refer to the school's Harassment and Sexual Harassment Policy for information on how to address a complaint of sexual harassment.

5. Roles and Responsibilities under the Policy

5.1 Complainant

Where an employee raises a complaint under the complaints procedure outlined below, they will be referred to as "the Complainant".

5.2 Respondent

Where an employee raises a complaint under the complaints procedure outlined below, the individual regarding whom the allegation is made against will be referred to as "the Respondent".

5.3 Management

The most effective way of eliminating bullying is by fostering and supporting an environment which is positive and inclusive. School management has a key role in creating and maintaining a positive workplace culture which is free from any form of bullying, where complaints are addressed expeditiously with a minimum of distress to all parties involved. In particular, management should:

- Ensure the implementation and regular review of this Policy and procedures;
- Provide information in relation to prevention, Policy, and procedures to employees on induction and promote awareness of this Policy on a regular basis;
- Set a good example by treating everyone in the workplace with courtesy and respect;
- Provide training on this Policy;
- Be vigilant for signs of bullying 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;
- Ensure that an employee is not victimised for having made a complaint;
- Communicate actively, promptly, and transparently with the Complainant and the Respondent in relation to any informal or formal complaint, while maintaining appropriate confidentiality;
- Monitor and follow up the situation after a complaint is made.

5.4 Employees

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

All employees have a role in promoting a workplace culture that is free from any form of bullying. All employees have a responsibility to behave with dignity and respect towards one another in the workplace. This applies both in individual interactions and in interactions with other employees, students, parents, volunteers, contractors and anyone present in the school.

Employees have an obligation to cooperate with any investigation of complaints of bullying, whether at the informal or formal stage, or in circumstances other than where a complaint has been made. Employees have an obligation to provide any relevant information that may assist in such investigations.

5.5 Contact Person

A Contact Person is available to provide information to any employee who may have a query in relation to the operation of this Policy. The role of the Contact Person is to provide information and emotional support in a confidential manner to any employee who feels that they are being subjected to bullying. Any employee may volunteer to be a Contact Person and the school may have one or more Contact Person(s). The school will provide training for the Contact Person in relation to their role. The Contact Person will provide the employee with a copy of the Policy and explain the options open to the employee. The role of the Contact Person is limited to providing support to the employee; the Contact Person has no role in advising or directing the employee to take a particular course of action.

It is not the role of the Contact Person to act as an advocate or representative of the employee and the Contact Person may not approach the alleged perpetrator(s) on an employee's behalf. The Contact Person has no role in the investigation of complaints and should keep no records of any discussions with the employee.

A list of contact persons is available on the staff noticeboard.

5.6 Nominated Person

A Nominated Person manages the complaint on behalf of the School under the secondary informal procedure. The Nominated Person will normally be at Deputy Principal level.

6. Complaints Procedure

6.1 Overview

This Policy emphasises the importance of early intervention and, where appropriate, use of an informal approach, offering as it does the best possible potential for a good outcome, particularly with regard to restoring workplace relationships. It is recognised that an informal approach may allow for unwanted behaviour to be addressed without the need for a Complainant to have recourse to any other action.

The procedure for managing complaints consists of an informal process with two stages and a formal investigation. Each complaint will be assessed on its own merits in order to identify the most appropriate means of dealing with the matter, including whether stages of the procedure should be bypassed. In certain circumstances, a serious complaint or allegation of bullying may be referred by management for formal investigation at the outset.

While every effort should be made to resolve the complaint by using and exhausting informal procedures, such efforts may not succeed, and it may be determined that the matter should proceed to investigation. Where this occurs, the investigation process is designed to deal with complaints promptly, with minimum distress for the parties involved, using fair procedures which uphold the rights of all parties.

The Code provides that organisations should monitor complaints and how they are resolved in order to evaluate, improve and update the policy and procedures at regular intervals. Appropriate records will be kept while observing data protection/GDPR requirements.

6.2 Mediation

Mediation can be a very effective means of trying to resolve complaints. It is a proven method that is used in many settings effectively where the parties approach it with an open mind and a willingness to engage. In order to make an informed decision on whether to engage and for information on how mediation operates, please refer to the WRC Mediation Brochure at Appendix 1. Parties will be encouraged to consider mediation from early on in the complaint management process, where appropriate.

The objective of mediation is to resolve the matter speedily and confidentially with the minimum of conflict and stress to the individuals involved. Mediation requires the voluntary participation and co-operation of both parties in order to work effectively. Although it is recognised that mediation is more likely to have a better outcome when the parties engage at an early stage, the parties can choose to engage in mediation at any stage of the process, including during or after formal investigation.

The mediation process is strictly confidential to the parties.

Where the parties do decide to engage in mediation, the JMB, ASTI, TUI and FÓRSA recommend the mediation services provided by the Workplace Relations Commission.

6.3 Initial Informal Procedure – Stage 1

An informal approach may address the unwanted behaviour without the need for further action. This is an informal mechanism that is designed to be flexible in order to allow for minor complaints to be dealt with quickly. Ideally, this initial informal response would address the unwanted behaviour effectively, without the need for a Complainant to have recourse to further action.

Before deciding on what course of action to take, if any, the Complainant may wish to discuss the matter on a confidential basis with the Contact Person. The role of the Contact Person is a supportive, informative role and is outlined in paragraph 5.5 of the Policy.

(a) A Complainant who believes that they are being bullied may approach the Respondent directly in order to make the person aware that the behaviour concerned is unwelcome. In doing so, the Complainant should focus on the facts regarding the alleged unacceptable behaviour and its effects on them.

(b) If it is more suitable, the Complainant should put their concerns in writing to the Respondent, focusing on the alleged unacceptable behaviour and the effects of same.

(c) Sometimes the alleged perpetrator is genuinely unaware that their behaviour is unwelcome and causing distress to the Complainant. An informal discussion is often sufficient to make the person aware of the effects of their behaviour and can lead to a greater understanding and an agreement that the behaviour will stop.

(d) Alternatively, if the Complainant is not comfortable raising the matter directly with the

Respondent, or if a direct approach does not resolve the matter, the Complainant may request a Deputy Principal[4] to approach the person on their behalf.

(e) Where a Complainant requests a Deputy Principal to approach the Respondent, they should do so without delay. Where appropriate, the Deputy Principal should attempt to resolve the matter in a low-key and non-confrontational manner by making the Respondent aware of the effects of their behaviour on the Complainant. The Deputy Principal may arrange to meet with the parties separately or jointly in order to try to reach agreement on a resolution of the matter. Both parties should be reminded of supports that are available, including the availability of the Employee Assistance Service.

(f) Alternatively, the Deputy Principal may encourage the parties to avail of mediation in order to try to resolve the matter, highlighting its effectiveness at resolving complaints at an early stage.

6.4 Secondary Informal Procedure – Stage 2

This more protracted, yet still informal procedure, may be used if the Initial Informal Procedure is unsuccessful or unsuitable due to the seriousness of the issue. In this procedure, a person will be assigned to handle the complaint on behalf of the organisation - the "Nominated Person." The Nominated Person should not be the Contact Person. The Nominated Person should gather the facts, before establishing the context and the next course of action in dealing with the matter under the informal procedure. The Informal Procedure Stage 2 should be conducted as expeditiously as possible.

(a) The Complainant and Respondent should be advised that a Nominated Person has been assigned to deal with the complaint and that the Nominated Person will contact both employees directly.

(b) A complaint may be verbal or in writing. Where the Complainant submits their complaint in writing the Nominated Person should meet with them to gather further details in relation to the written complaint. Where an employee does not submit their complaint in writing, the Nominated Person should meet with the Complainant, gather the facts and make a written note of the complaint. It is not the role of the Nominated to interview witnesses or gather evidence, aside from the Complainant's and, where appropriate, Respondent's accounts. The Complainant should be provided with copy of the finalised complaint.

(c) If the complaint concerns alleged bullying as defined, and includes concrete examples, the Respondent should be presented with the complaint and their response established. The Respondent will be provided with a copy of the complaint and asked for their response to the complaint. The response may be provided verbally or in writing.

(d) If the behaviour complained of does not concern alleged bullying, an alternative approach should be put in place and a rationale recorded. It should be noted that if no concrete examples of inappropriate behaviour are given by the Complainant, it must be deemed that there is no complaint to be answered by the Respondent. For example, this could include directing the Complainant to an alternative procedure such as the Grievance Procedure.

[4] Where the complaint concerns the Deputy Principal, the Complainant may approach another Deputy Principal or, where unavailable, the Principal.

(e) The Nominated Person will adopt a flexible and responsive approach in an effort to resolve the complaint and restore positive working relations. The Nominated Person may meet with the parties separately as well as jointly on a number of occasions.

(f) The Nominated Person may recommend mediation and seek the agreement of the parties to engage in same. Alternatively, the Nominated Person may assist the parties in identifying a method to be agreed between the parties to progress the issue to resolution so that both parties can return to a harmonious working environment without bullying being a factor.

(g) Where inappropriate behaviour of the Respondent has been partly or fully identified, steps should be taken to stop the behaviour and to monitor it going forward so as to prevent a reoccurrence. This should include the drawing up of a plan with agreed actions which is to be signed by both parties at the final meeting.

(h) The parties will be reminded of the importance of confidentiality in the process and that any breaches thereof may be dealt with under the appropriate disciplinary procedure.

(i) All information disclosed in the course of mediation must remain within the mediation process and must not be disclosed to third parties, including an investigator in the event that the matter proceeds to formal investigation.

7. Formal Procedure

Proceeding to a formal process should not be viewed as automatic and it is important that it is recognised that it is the reasonable evidence-based decision of management.[5]

Where efforts to resolve the complaint through the informal procedures or mediation have been exhausted and are unsuccessful, or where processing through the informal procedures is deemed to be inappropriate, the complaint may proceed to investigation where management considers this appropriate. Escalating a complaint to formal investigation should only be done following a review of all aspects of the circumstances surrounding the complaint.

7.1 Formal Complaint

The Complainant should make a formal complaint in writing to the Principal.[6] The complaint should be signed and dated and confined to the precise details of the allegation(s), including their dates and the names of witnesses where possible. The Bullying Complaint Form at Appendix 2 can be used for this purpose. Confirmation of receipt of this form should be sent to the complainant within five working days.

The Respondent will be notified in writing within a further five working days that an allegation of bullying has been made against them. The Respondent will be given a copy of the Complainant's statement or Bullying Complaint Form, as appropriate, and a copy of this Policy and will be advised that they will be afforded a fair opportunity to respond to the allegation(s).

[5] SI No 674 of 2020, p25

[6] Where the complaint involves the Principal, the formal complaint should be made in writing to the Chairperson of the Board of Management, who will assume the role of Principal in the process.

The complaint will be subject to an initial examination by the Principal with a view to determining an appropriate course of action.[7] This could be exploring a mediated solution or seeking to resolve the matter informally. Should either of these approaches be deemed to be inappropriate, the complaint will be referred for formal investigation.

The Complainant and the Respondent should be advised in writing of the aims and objectives of the formal process, the procedures and approximate expected timeframes involved, and the possible outcomes. Both parties should be assured of support throughout the process, including the availability of the Employee Assistance Service and their right to be accompanied at all meetings.

An initial meeting should be organised by the Principal with the Complainant and Respondent separately. If both parties agree to engage in mediation or to attempt resolution at the earlier informal stage of the Policy, the formal investigation can be put on hold, pending the outcome of same.

7.2 The Investigation

Where there is no option but to proceed to a formal investigation, the Board of Management will appoint an independent third party to conduct the investigation. The criteria for appointment of an investigator are as follows:

- **Training and experience** – the investigator should be trained and/or experienced in conducting investigations;
- **Independence** – the investigator should be independent and have no conflict of interest in conducting the investigation;
- **Impartiality** – the investigator should be impartial and there should be no apprehension of bias on the part of the investigator towards any party involved in the investigation.

Once the Board of Management has engaged an investigator, the parties will be notified and provided with a statement outlining who the investigator is and how they meet the criteria.

Either party may raise an objection in relation to the appointment of the proposed investigator on the grounds that the Investigator does not meet one or more of the above criteria.

It is presumed that the appointment of the proposed investigator is agreed unless an objection is raised by the Complainant or Respondent by writing to the Chairperson within **7 calendar days** of the date of notification of the proposed investigator.

An objection should normally be made on the grounds that the proposed investigator does not meet one or more of the criteria for appointment set out above. The party objecting must specify which of the criteria it is alleged is not met by the proposed investigator and provide information to support their objection.

The objection will be assessed by the Chairperson who will issue a decision on the objection within **7 calendar days**. If an objection is upheld by the Chairperson on one or more grounds, another investigator will be appointed.

Where the objection is not upheld, the Chairperson will set out the reasons for their decision. In this case, the investigation will proceed under the proposed investigator and a record of the objection and the decision will be kept on file. The appointment of the investigator can be raised in the course of the appeal procedure following the conclusion of the investigation.

[7] Where the complaint involves the Principal, the Chairperson will carry out the initial examination.

The investigation should be governed by Terms of Reference, determined by management following consultation with the Complainant and the Respondent.

The Terms of Reference will be based on the written complaint, the response of the Respondent and any witness statements. The purpose of the investigation is for the investigator to gather the facts and decide, on the balance of probabilities, whether or not the Respondent has a "case to answer" (i.e. that there is sufficient evidence present that the matter should proceed to a disciplinary hearing).

The investigation will be conducted thoroughly and objectively, with due respect for the rights of both the Complainant and the Respondent. Confidentiality will be maintained throughout the investigation to the greatest extent consistent with the requirements of a fair investigation. It is not possible however to guarantee the anonymity of the Complainant or any person who participates in the investigation.

The Complainant and Respondent will be given copies of all relevant documentation prior to and during the investigation process, including the Terms of Reference, the written complaint, the written response of the Respondent to the complaint, witness statements and records of meetings.

Both the Complainant and the Respondent may be accompanied to any meetings by a union representative or work colleague if so desired.

Both the Complainant and the Respondent may provide details of witnesses or any other person whom they feel could assist in the investigation. The investigator may also identify relevant witnesses. The investigator will determine which witnesses they will meet in the course of the investigation. Persons may be required to attend further meetings to respond to new evidence or to provide clarification on any of the issues raised. Employees are expected to cooperate fully with the investigation and will be fully supported throughout the process. It will be considered a disciplinary offence to intimidate or exert pressure on any person who may be required to attend as a witness.

A written record will be kept of all meetings. Parties will be provided with a copy of the written record of the meeting and will be provided with an opportunity to amend the record or comment on the factual accuracy of same. If the Investigator does not agree with the proposed amendments or comments appended to the record, both records of the meeting and any added comments will be kept and appended to the final report.

Any party who participates in the investigation process will be required to respect the privacy of the parties involved by refraining from discussing the matter with other work colleagues or persons outside the organisation.

Refusal or failure by any party to cooperate with the investigation will not prevent the investigation from proceeding.

On completion of the investigation, the Investigator will prepare a written report. The Investigator will decide on the balance of probabilities, based on the facts before them, whether or not the Respondent has a case to answer. If the investigator concludes that the Respondent has a case to answer on the balance of probability, the investigator may recommend whether the matter should be dealt with in accordance with the appropriate disciplinary procedure.

Both the Complainant and the Respondent will be given a copy of the draft investigation report and will be afforded the opportunity to propose specific amendments to the report, on matters of fact, in writing within **[5]** working days.

On completion of the investigation, the investigator will submit a final investigation report to the Complainant, the Respondent, and the Chairperson of the Board of Management. All parties are reminded of their duty of confidentiality in relation to the investigation and the investigation report. Any disclosure to third parties may be dealt with in accordance with the appropriate disciplinary procedure.

The investigator will take all appropriate steps necessary to ensure compliance with data protection legislation and GDPR. During the investigation, the investigator will keep all records relating to the investigation in a secure and appropriate manner. On conclusion of the investigation, the investigator will transfer to the Chairperson all records relating to the investigation in a secure and appropriate manner.

The parties may agree to enter mediation at any stage of the investigation process.

8. Outcome of the Investigation

Depending on the outcome of the investigation, appropriate action will be taken, which may include invoking the disciplinary procedure or offering mediation or counselling. Information on any action taken, including whether a disciplinary process is invoked in respect of the employee against whom the complaint is made, will be confidential, and not shared with the Complainant.

Where it is established that the Respondent has no case to answer, no action will be taken against the Complainant provided that the complaint was made in good faith. In the interests of all employees, any malicious or vexatious complaints will be treated very seriously and may lead to disciplinary action against the Complainant. Victimisation or retaliation against a Complainant, witness or any other party may amount to serious misconduct, which may be dealt with in accordance with the appropriate disciplinary procedure.

Any individual found to have made a false allegation of bullying or any individual who supports a false claim, for example a witness who participated in the investigation, may be subject to disciplinary action up to and including dismissal.

Regardless of the outcome of the investigation, it is recognised that investigations can result in divisive relationships. Consideration may be given as to how best to support the working relationship between the parties going forward. Parties to a complaint will be encouraged to avail of support from the Employment Assistance Service.

9. Appeal

If either party is not satisfied with the outcome of an investigation they may appeal to a nominee of the Workplace Relations Commission. The appeal, which must be in writing, must be lodged with the Secretary of the Board of Management[8] within **[two weeks]** of the date on which they were notified of the outcome of the investigation. The grounds of appeal should be stated clearly in the appeal. . Any appeal will focus on the conduct of the investigation in terms of fair process and adherence to procedure. It is not a re-hearing of the original issues.

[8] If the Principal is one of the parties, the appeal should be lodged with the Chairperson of the Board of Management

The investigator may be required to make himself or herself available to the nominee of the Workplace Relations Commission to clarify procedural matters.

If the appeal is not upheld, the Investigation Report will stand. If the appeal is upheld, a new Investigator will be appointed to carry out a fresh investigation.

The outcome of the appeal shall be final insofar as the employer's duties under health and safety legislation is required.

10. Confidentiality

All individuals involved in the procedures referred to above must maintain absolute confidentiality on the subject. Any breaches of confidentiality will be dealt with in accordance with the appropriate disciplinary procedure.

11. Victimisation

Employees will not be penalised, treated less favourably or subject to other adverse treatment because of pursuing rights by way of taking action, supporting action, or giving notice of intention to take or support action under this Policy or under equality legislation. Any victimisation of employees will be dealt with in accordance with the appropriate disciplinary procedure.

12. Review

The Policy will be reviewed every **two** years after its implementation.

Appendix 1

Workplace Mediation

A User's Guide

mediation@workplacerelations.ie

What is Workplace Mediation?

Mediation is a voluntary, confidential process that allows two or more disputing parties to resolve their conflict in a mutually agreeable way with the help of a neutral third party, the mediator.

The Workplace Relations Commission's Workplace Mediation Service provides a prompt, confidential and effective remedy to workplace conflicts, disputes and disagreements. Workplace mediation is particularly suited to disputes involving individuals or small groups of workers. Examples of such disputes would be:

- Interpersonal differences, conflicts, difficulties in working together
- Breakdown in a working relationship
- Issues arising from a grievance and disciplinary procedure (particularly before a matter becomes a disciplinary issue)
- Industrial Relations issues which have not been the subject of a referral to the WRC Adjudication Service or the Conciliation Service, the Labour Court or other statutory dispute resolution body.

How does Workplace Mediation work?

Mediation provides an opportunity for those involved to address the issues, explore options and reach a workable outcome through a mutually agreeable course of action. The process is flexible and can be adapted depending on individual situations but essentially revolves around giving every individual concerned an opportunity to give their side of the story and to work with the other party to find a solution. The process may involve a mix of joint meetings or meetings with the mediator alone. The entire process is focused on every individual involved being comfortable with the process and on the active exploration of potential solutions. Some key principles governing the process include:

- It is voluntary - it can only take place on the basis that all sides are agreeable to participate. Anyone can withdraw at any stage if they want to
- It is confidential - the process is private and confidential to the parties unless otherwise agreed. This will give parties confidence to express exactly how they feel and confidence to explore solutions without prejudice
- It is fast - takes place as soon as schedules etc. permit
- It is solution focused - the object of the exercise is to reach a workable and mutually agreeable solution to the conflict or issue of difference
- It is impartial - the mediator is impartial and does not take sides

Some Benefits of Workplace Mediation Workplace Mediation with the WRC

- It is an opportunity to resolve a problem in an informal non-adversarial way
- The resolution to the issue remains in the control of the individuals directly concerned. They will be involved in the development of the solution and as a result the outcome is likely to be better and longer lasting
- It creates a safe place for all sides to have their say and be heard
- It has the potential for a high success rate and positive outcomes where the parties are genuinely committed to a resolution
- Mediation focuses on the future working relationships of those involved
- It will not duplicate other dispute resolution services

Workplace Mediation with the WRC

The WRC provides a comprehensive range of industrial relations and workplace relations services including advice, conflict resolution (conciliation, facilitation and mediation) and conflict prevention. We have many years

experience of involvement in the resolution of workplace conflicts involving small and large groups of employees in various enterprises/services. The provision of a Workplace Mediation Service is designed to provide an effective, tailored response to the issues arising in Irish workplaces today.

The Workplace Mediation Service is delivered by skilled officers of the Commission's Conciliation and Advisory Services who have undertaken specific studies/training in Workplace Mediation.

What happens if a dispute remains unresolved following Mediation?

The mediation services of the WRC is focused on assisting parties to deal effectively with issues that arise in the workplace. Participation in mediation does not oblige any party to commit to any further procedure in the event that the problem remains following mediation.

The mediator will, in the event of a problem remaining unresolved following mediation, assist the parties in agreeing a joint way forward in relation to the issues.

How do I apply for Mediation?

All applications for mediation should ideally be made on a joint basis. The process will work best when both parties have a desire to resolve an issue and have jointly agreed that mediation is the best means to secure that resolution.

Notwithstanding this, the Commission will attempt to secure agreement to participate in mediation where only one party has sought the intervention. The process is however voluntary and the Commission is not in a position to compel attendance.

All applications for mediation should be addressed to:

Workplace Mediation Service
Workplace Relations Commission
Lansdowne House, Lansdowne Road
Ballsbridge, Dublin 4, Ireland

Email: mediation@workplacerelations.ie

All applications for mediation should state clearly the name and contact details including email and telephone numbers of all parties, the number of parties involved and the nature of the issue involved.

Appendix 2

Anti-Bullying Policy – Formal Complaint Form

Before completing this form, you are strongly advised to consult the Anti-Bullying Policy (the "Policy").

In accordance with the Policy, the person you are making the complaint against ("the Respondent") will be notified in writing that a formal complaint of bullying has been made against them and will be provided with a copy of this complaint.

The complaint will be subject to an initial examination with a view to determining an appropriate course of action, such as a mediated solution or an informal process. Should either of these approaches be deemed to be inappropriate, the complaint will be referred for formal investigation.

Mediation

Mediation is an informal type of alternative dispute resolution (ADR) and is proven to be very successful at resolving disputes swiftly and in an informal manner. Mediation is a voluntary process that requires the cooperation of all parties. For more information on the mediation process please visit:

https://www.citizensinformation.ie/en/employment/enforcement-and-redress/workplace-mediation/

Please note that you can still proceed with the formal process if mediation is not successful.

Are you willing to consider mediation as an alternative to the formal process?

Yes ☐ **No** ☐

Bullying is defined as set out below:

*"**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 be reasonably regarded as undermining the individual's right to dignity at work."*

Please note that a **single incident** cannot amount to bullying but may be an affront to dignity at work. If the incident you are complaining about is a single incident, you may still inform the Principal but it will not be dealt with under the Anti-Bullying Procedures.

Please also note that complaints that relate to **Harassment, Sexual Harassment or Grievances** are not dealt with under the Anti-Bullying Policy but have their own respective policies.

Examples of bullying behaviour include (not an exhaustive list):

- Exclusion with negative consequences
- Verbal abuse/insults;

- Being treated less favourably than colleagues in similar roles;
- Belittling a person's opinion;
- Disseminating malicious rumours, gossip or innuendo;
- Socially excluding or isolating a person within the work sphere;
- Intrusion – pestering, spying or stalking;
- Intimidation/aggressive interactions;
- Excessive monitoring of work;
- Withholding information necessary for proper performance of a person's job;
- Repeatedly manipulating a person's jobs content and targets;
- Blaming a person for things beyond their control;
- Use of aggressive an obscene language;
- Other menacing behaviour.

Please outline below who your complaint of bullying is against.

Insert the name(s) of the person(s) you wish to make a complaint against here:
Insert the name(s) of any person(s) who witnessed the alleged incidents here:

Please outline anyone who was a witness to your complaint below.

Please outline the particulars of your bullying complaint in the box below and overleaf (if required). Please ensure to include:

1. Each specific incident of bullying behaviour you wish to complain about;
2. Where the incidents occurred;
3. When (approximately) the incidents occurred (date and time where possible);

Insert details of your complaint here:

Name: _____

Signed: _____

Dated:_____