

NCI STUDENT POLICY ON PREVENTION AND RESOLUTION OF BULLYING & HARASSMENT

The National College of Ireland is committed to providing all of its students with an environment free from bullying and any form of harassment. All students have the right to be treated with dignity and respect. The College aims to provide a campus culture marked by mutual regard, personal dignity and support for everyone's skills and abilities. The College strives for a campus environment where employees and students may reasonably expect to pursue their work in a safe and civil environment, free from discrimination, harassment, threatening or violent conduct or offences against individuals or property.

Bullying and harassment by fellow students, employees and non-employees of the College will not be tolerated. Employees include full-time faculty, part-time faculty, Associate Faculty, administrative support staff and security staff of the College. Non-employees include service providers, users of the College facilities, other business or community organisations including any person with whom the College might reasonably expect students to come into contact such as those who supply or deliver goods/services to the College, maintenance and other types of professional contractors as well as volunteers.

Students have a responsibility to create and contribute to the maintenance of an environment free from bullying and harassment or from conduct likely to contribute to bullying and harassment.

All students will be expected to comply with this policy. Management and employees of the College will take appropriate measures to ensure that bullying/harassment do not occur.

Management and employees of the College should:

- Provide a good example by treating all in the College with courtesy and respect,
- Promote awareness of the policy and the complaints procedures,
- Be vigilant for signs of harassment and bullying and take action before a problem escalates,
- Deal sensitively with a student who makes a complaint of bullying or harassment,

- Explain the procedures to be followed if a complaint is made to them,
- Ensure that an alleged perpetrator is treated fairly,
- Ensure that students making a complaint are not victimised for doing so,
- Monitor and follow-up after a complaint is made to ensure that harassment or bullying is not recurring.

Appropriate disciplinary action, including expulsion for serious offences, will be taken against any student who breaches this policy. In the case of employees, the College's Disciplinary Procedures will be invoked. In the case of non-employees, sanctions could include the suspension of contracts or services, or exclusions from the College campus or other work environs or the imposition of other sanctions (as appropriate). A complaint of bullying or harassment from a student which is found, following investigation, to be vexatious will be dealt with through the Student Disciplinary Procedures.

Please refer to the College's Children Protection Guidelines and Principles for the Protection of Vulnerable Adults if the student affected is under 18 years of age or is a vulnerable adult.

The scope of this policy extends beyond the College, for example, to sporting and other events organised by the College which take place outside the IFSC campus or other off-campus locations. It may also extend to student social events organised by the NCI Students Union.

The number of instances of reported harassment and bullying will be monitored as well as how complaints are resolved. This information will be used to evaluate this policy and its procedures and implement changes as appropriate. The policy will also be updated in line with changes in the law, relevant case law or other developments.

New students will be informed about this policy during their Student Orientation. All students will be reminded about the policy as part of the annual registration process. The Policy is published and available on-line and a link to the Policy is available from each Programme Guide.

DEFINITION OF BULLYING

Bullying has been defined as repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, which could reasonably be regarded as undermining the individual's right to dignity and respect. An isolated incident of the behaviour described in this definition may be an affront to dignity and respect but as a once off incident is not considered to be bullying.¹

A single isolated incident of a serious nature could constitute an affront to an individual's dignity and respect.

A pattern of the following behaviours are examples of types of bullying. This list is not exhaustive and includes behaviour towards other students, employees and non-employees of the College.

- Exclusion with negative consequences
- Verbal abuse/insults
- Physical abuse
- Being treated less favourably than others Intrusion – pestering, spying or stalking
- Menacing behaviour
- Intimidation
- Aggression
- Undermining behaviour
- Humiliation
- Persistent unjustified criticism or sarcasm
- Blame for things beyond the person's control

Bullying does not include reasonable and essential discipline arising from the good management of the performance or conduct of a student or actions taken which can be justified as regards the safety, health and welfare of students. For example, a student whose performance is continuously signalled at a level below that which is required may feel threatened and upset but this in itself does not indicate bullying.

¹ Health & Safety Authority Code of Practice for Employees & Employers on the Prevention & Resolution of Bullying at Work, March 2007.

- Cyberbullying refers to bullying which is carried out using the internet, mobile phone or other technological devices. Cyberbullying generally takes a psychological rather than a physical form but is often part of a wider pattern of bullying behaviour.

DEFINITION OF HARASSMENT

Under the Equal Status Acts 2000-2004 harassment is any form of unwanted conduct related to any of the nine specific discriminatory grounds defined below 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. The unwanted conduct may include acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

Many forms of behaviour may constitute harassment including:

- Verbal harassment – jokes, comments, ridicule, songs, recordings
- Written harassment – including text messages, e-mails, notices, or misuse of social media.
- Physical harassment – jostling, shoving, or any form of assault
- Intimidatory harassment – gestures, posturing or threatening poses
- Visual displays such as posters, emblems, badges, recordings or misuse of social media
- Isolation or exclusion from social activities
- Pressure to behave in a manner that the student thinks is inappropriate, for example, being required to dress in a manner that is unsuited to a person's ethnic or religious background.

This list is illustrative rather than exhaustive.

The nine specific discriminatory grounds are defined as follows:

Gender – man, woman (including transgender).

Civil Status – single, married, separated, divorced, widowed, or in a civil partnership within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Acts 2010 or being a former civil partner in a civil partnership that has ended by death or been dissolved.

Family Status – responsibility as a parent or as a person in loco parentis in relation to a person under 18, or as a parent or the resident primary carer of a person over 18 with a disability which is of such nature as to give rise to the need for care or support on a continuing, regular or frequent basis.

Sexual Orientation – heterosexual, bisexual or homosexual.

Disability means –

- (a) The total or partial absence or a person’s bodily or mental functions, including the absence of a part of a person’s body,
- (b) The presence in the body of organisms causing, or likely to cause, chronic disease or illness,
- (c) The malfunction, malformation or disfigurement of a part of a person’s body,
- (d) A condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
- (e) A condition, disease or illness which affects a person’s thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour, and includes a disability which exists at present, or which previously existed but no longer exists, or which may exist in the future which is imputed to a person.

Age – applies only to employees over the maximum age at which a person is statutorily obliged to attend school. The minimum school leaving age is currently 16 years, or the completion of three years of post-primary education, whichever is the later.

Race – race, colour, nationality or ethnic or national origins.

Religious Belief – includes different religious background or outlook, (including the absence of religious belief).

Membership of the Traveller Community – “Traveller Community” means the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland.

The protection of the Equality Acts also extends to situations where the student does not have the relevant characteristic related to the discriminatory ground but the perpetrator believes that he/she has that characteristic, for example, if the perpetrator believes that the student is gay and is not.

DEFINITION OF SEXUAL HARASSMENT

Sexual Harassment is defined in the Equal Status Act as any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. A single incident may constitute sexual harassment.

Many forms of behaviour can constitute sexual harassment. Examples include:

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 – includes unwelcome sexual advances, propositions, requests or pressure for sexual activity, continued suggestions for social activity outside the workplace after it has been made clear that such suggestions are unwelcome, unwanted or offensive flirtations, suggestive remarks, innuendos or lewd comments.

Non-verbal conduct of a sexual nature – this may include the display or sending of pornographic or sexually suggestive pictures, calendars, objects, written materials, e-mails, text messages or faxes. It may also include leering, whistling or making sexually suggestive gestures.

Gender-based conduct – this includes conduct that denigrates or ridicules or is intimidatory or physically abusive of an employee because of his or her sex such as derogatory abuse or insults that are gender related.

The Acts do not prohibit all relations of a sexual or social nature. To constitute sexual harassment or harassment the behaviour complained of must firstly be unwelcome. It is up to each student to decide (a) what behaviour is unwelcome, irrespective of the attitude of others to the matter and (b) from whom, if anybody, such behaviour is welcome or unwelcome, irrespective of the attitudes of others to the matter. The fact that an individual has previously agreed to the behaviour does not stop him/her from deciding that it has become unwelcome. It is the unwanted nature of the conduct

which distinguishes sexual harassment and harassment from behaviour that is welcome and mutual.

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

The intention of the perpetrator of the harassment or sexual harassment is irrelevant. The fact that the perpetrator has no intention of sexually harassing or harassing the student is no defence. The effect of the behaviour is what is relevant.

If the student is below 18 years of age or is a vulnerable adult and conduct of a sexual nature occurs, the College's Child Protection Guidelines and Principles for the Protection of Vulnerable Adults should be referred to for further guidance.

COMPLAINTS PROCEDURE

Complaints by students will be treated with fairness and sensitivity and in as confidential a manner as possible. Confidentiality will be maintained throughout the course of any investigation consistent with the requirements of a fair investigation.

Depending on the nature of a complaint, it may be possible to resolve the matter through an informal intervention or through mediation.

A student who makes a complaint in good faith, who supports a complainant, who gives evidence in proceedings or who gives notice that they intend to do any of the foregoing will not be victimised.

The College will ensure that both parties to the complaint receive appropriate support e.g. counselling or other intervention as appropriate.

No assumption will be made about the culpability of an alleged perpetrator in the course of investigating a complaint.

As well as the roles set out below, the Learning Support & Development Officer in Student Services or the Director of Student Services can provide information and

advice to students who believe they are experiencing harassment or bullying and to students against whom allegations of harassment or bullying have been made.

Informal Procedures

This involves the student who believes that they are the subject of bullying/harassment making the person whose behaviour is causing them difficulty aware of the issues and asking them to stop the offending behaviour.

Where a student finds it difficult to approach the other party directly then they should seek help and advice on a confidential basis from a contact person. A contact person acts as an initial point of contact for someone who believes that he or she is being treated in a way that constitutes bullying or harassment. A list of those who can undertake the contact role is set out below. The role of the contact person is to listen and be a point of contact for the complainant. They can also explain the procedures in place to resolve complaints. This could involve providing the complainant with a copy of the NCI Student Policy on Prevention and Resolution of Bullying & Harassment, outlining the options available, explaining roles. The contact person does not get involved in any other way in the complaints procedure and does not act as an advocate for either party.

Contact Persons:

- Sarah Duignan, Admissions Officer, Student Services Department,
- Bronwyn McFarlane, Lecturer, School of Business,
- Keith Brittle, Information Project Officer, Norma Smurfit Library,
- Paul Hughes, Help Desk Support, IT Department,
- Frances Sheridan, Computer Support Tutor, School of Computing.

Where the informal procedures can be used to achieve a resolution, a separate person will be designated to deal with the complaint on behalf of the College. The complaint made to this designated person could be verbal or written. If verbal, a written note of what is complained of should be taken by the designated person and a copy given to the complainant.

Designated Persons:

- Mike Goldrick, Learning Support & Development Officer, Student Services,
- Bertie Kelly, Commercial & Business Incubation Centre Manger,
- Paul Stynes, Vice-Dean, Academic Programmes & Research, School of Computing.

The designated person should then establish the facts, the context and determine if the complaint falls under the definition of bullying or harassment.

If the behaviour complained of falls under the definition of bullying or harassment and includes concrete examples of inappropriate behaviour, the person complained of should be presented with the complaint and his/her response established.

Following this, an approach should be agreed to resolve the issue so that both parties can return to a harmonious learning environment where bullying/harassment will not be a factor going forward.

If the behaviour complained of does not constitute bullying/harassment as defined, an alternative approach should be put in place and a rationale recorded. If the complaint is not supported by concrete examples, it must be deemed that there is no complaint to be answered by the person complained of as they have no recourse to repudiating an accusation that is not supported by concrete examples.

The Lecturer, Programme Director, relevant Vice-Dean or other member of the College Staff should be kept informed as appropriate.

Informal resolution could include, for example, clarification of what bullying or harassment is, agreement to alter style, agreement by the person complained of, if they accept that their behaviour was inappropriate, that the conduct will not be repeated, or an explanation to the complainant about what occurred from the point of view of the person complained of which dispels the complaint.

Mediation

Mediation is an assisted process for resolving differences which aims to help the parties come to an understanding and reach agreement. The objective is to assist the parties themselves to resolve their complaint in a mutually agreeable way with the help of a neutral third party, a Mediator.

Participation in the mediation process is voluntary. The agreement of both parties to participate in mediation is required.

Information disclosed and exchanged during mediation is confidential and remains within the mediation process. It must not be given by the mediator to an investigator if there is a subsequent investigation under formal procedures.

The role of the Mediator is:

- To manage the mediation process
- Explain the role of the Mediator
- Explain the process to the parties and ensure that there is common understanding of the mediation process.
- Establish the ground rules
- Gather information and identify the issues where there is disagreement
- Facilitate the process of reaching understanding and agreement.

Records

In both scenarios the designated person (Informal Procedures) and the mediator (Mediation) should keep a record of the complaint, meetings held, actions agreed and signed records of the final meeting. The purpose of the records, which do not include details of discussions, is to provide evidence that the complaint was responded to and whether or not a resolution was achieved.

Following a resolution under Informal Procedures, consideration will be given to putting in place supportive interventions for the parties involved.

Formal Procedure

It is recognised that it may not always be appropriate to use the informal procedure particularly where the bullying or harassment is serious. Also, if a resolution cannot be achieved through the informal procedures or through mediation, the matter will be dealt with under the formal procedures. Formal procedures will be used where bullying or harassment continues after an informal procedure has been followed or where the student making the complaint wishes it to be treated formally. Formal procedures involve submitting a formal complaint and a formal investigation.

Choosing not to use the informal procedure or declining to participate in a mediated process will not reflect negatively on a complainant in the formal procedure.

If mediation was attempted and was unsuccessful, the Mediator will not have a role in the formal procedures.

When a formal complaint is being made, then the student should contact the Registrar as soon as possible. If the complaint is against the Registrar, the Vice President Academic Affairs & Research should be contacted.

The complainant will make a formal complaint in writing which is signed and dated. The complaint document should be confined to the precise details of the alleged incidents, including dates and the names of witnesses, if any. The complainant will be informed of the steps involved, timeframes and possible outcomes. They will also be given a copy of the College's Student Policy on Prevention and Resolution of Bullying & Harassment.

A meeting will be organised with the person against whom the complaint has been made. They will be given a copy of the complaint document and the College's Student Policy on Prevention and Resolution of Bullying & Harassment. They will be informed of the steps involved, timeframes and possible outcomes.

If a complaint of harassment or bullying is made against a person who is not a student or employee of the College and it transpires that it is not possible to secure their participation in either a formal or informal process, such individuals will be kept informed of any developments and given an opportunity to respond to them. The outcome of an investigation and any potential sanctions will be explained to such individuals and/or any person or company for whom they work.

Investigation

The investigation of any complaint will be handled with fairness, sensitivity and with due respect for the rights of both the complainant and the alleged perpetrator. The principles of natural justice will be adhered to when an investigation is being conducted.

An appropriate Investigator who is not connected with the allegation in any way and who can be considered impartial may conduct the investigation or, if the circumstances require it, an investigator external to the College may be appointed. More than one person may be appointed to conduct the investigation. Where more than one person is appointed to carry out an investigation, consideration will be given to the gender or diversity balance of those conducting the investigation.

Terms of Reference along the following lines will be established for the investigation:

1. The investigation will be conducted by <name>.
2. The scope of the investigation will cover the specific complaints made by <the Complainant> in his/her complaint document dated <date>.
3. In adhering to the principles of natural justice <the Respondent> will be furnished with documentation detailing the allegation and with all other information upon which the Investigator may rely on in arriving at a decision.
4. The <Respondent> will be given reasonable time to consider the documentation and an opportunity to respond in writing.
5. In the course of the investigation, the Investigator will meet with <The Complainant>, and with any of his/her witnesses or relevant person(s). The Investigator will also meet with the <Respondent> and with any of his/her witnesses or relevant person(s). These meeting will take place on a one-to-one confidential basis.
6. The Investigator may also identify appropriate witnesses.
7. Copies of witness' statements will be furnished to both the Complainant and the Respondent.
8. Both the Complainant and the Respondent may be accompanied at the investigative interview by another student, or a friend or a family member or a representative of the Students' Union.

9. In the interests of the parties involved and in the interests of integrity of the investigation process, all parties to the investigation are expected to adhere to the highest standards of confidentiality in regard to the content and process of the investigation. Confidentiality will be maintained throughout the investigation to the greatest extent consistent with the requirements of a fair investigation. For clarity, this means that the Complainant and the Respondent should not discuss any matter in relation to the investigation with any person other than their respective representatives or with the Registrar in the context of procedural matters. On no account should either party discuss subject matter, the investigation or the investigation process with a witness or potential witness. Similarly, witnesses should not discuss the subject matter, the investigation or the investigation process with any person other than the Investigator or the Registrar in the context of procedural matters.
10. Both the Complainant and the Respondent will be provided with a written record of all meetings, and any documentation or material in relation to the allegation and with all other information upon which the Investigator may rely on in arriving at a decision. Both parties will be given an opportunity to respond in writing, or if necessary in person, to this material before the Investigator considers the evidence.
11. On completion of the investigation, the Investigator will furnish a written report containing the findings and the reasons for the final decision. In arriving at a conclusion, the Investigator will consider whether or not, on the balance of probabilities, the behaviours complained of occurred. Where a complaint is not upheld, the Investigator will consider, whether or not, on the balance of probabilities, the complaint was false, malicious or vexatious. A complaint not being upheld does not necessarily mean that the complaint was vexatious.
12. Where a complaint is upheld, the report will recommend whether or not the College's Student Disciplinary Procedures should be invoked.
13. The Investigator will furnish the Report to the Registrar within three weeks of the sign-off of final interviews. The timeframe for the investigation will be impacted by the availability of parties for interview and by the number of witnesses or parties for interview. The objective of the Investigator will be to complete the investigation and report as quickly as is practicable but depending on the circumstances it could take up to three months to complete from the date of the initial interview with the Complainant.

Representation

The complainant, the respondent and any witnesses have the right to be accompanied by another student or a friend or family member, or representative of the Students' Union

Outcomes from the Investigation

Where a complaint is upheld against a student, the matter may be dealt with under the College's Student Disciplinary Procedures. This could lead to disciplinary sanctions up to and including expulsion being imposed. In the case on non-employees, sanctions could include the suspension of contracts or services, or exclusions from the College campus or other work environs or the imposition of other sanctions (as appropriate).

Complaints that are found to be false, malicious or vexatious may also be dealt with under the College's Student Disciplinary Procedures.

A record of the investigation will be maintained by the Registrar in accordance with the Data Protection requirements.

Appeals

When the Investigator's Report is issued to the Complainant and the Respondent, they will be given the opportunity to comment on the findings within a set timeframe. No action will be taken by the College before this process is completed. The College will respond to any comments submitted and will advise the parties of the appeals process.

The appeal will be heard by a party not involved in the investigation or not connected with any of the issues considered under the investigation. This could be a member of management in the College or an external third party. The appeal will focus only on the aspect(s) of the case cited by the appellant as being the subject of the appeal.

Appeals arising from any Student Disciplinary Procedures initiated will be dealt with under that process.

Action Post Investigation

Regular reviews will be made by an appropriate party to ensure that the bullying/harassment has stopped and that there has been no victimisation for referring a complaint in good faith. Appropriate supports will be considered for both parties. Retaliation of any kind against a student for complaining or taking part in an investigation concerning bullying/harassment is a serious disciplinary offence.

Statutory Rights

Using this complaints procedure will not affect a complainant's right to make a complaint under the Equal Status Act. A complaint of harassment or sexual harassment including complaints relating to expulsion in circumstances amounting to discrimination or victimisation, may be made to the Director of the Equality Tribunal who may refer the complaint to an Equality Officer or, with the parties' agreement, for mediation.. A complaint must be made within 6 months of the alleged occurrence of the harassment or of the most recent occurrence of such harassment. The time limit of 6 months may be extended up to a maximum period of 12 months where reasonable cause is shown.

Further Information

All questions relating to the implementation or interpretation of this policy should be referred to the Registrar.

The Learning Support & Development Officer in Student Services or the Director of Student Services can provide information and advice and to students who believe they are experiencing harassment or bullying and to students against whom allegations of harassment or bullying have been made.

Advice on harassment and processing a complaint of harassment can also be obtained from the Equality Authority (www.equality.ie).