



& CDETB Craft Unions (e.g. TEEU, INPDU, UCATT and BATU)

Code of Practice for dealing with Complaints made by Parent/s, Guardian/s of a Student or by a Student (who has reached the age of eighteen) currently enrolled in a school/centre, against a Staff Member employed by Tipperary Education and Training Board (ETB)



etb

Bord Oideachais agus
Oiliúna Thiobraid Árann
*Tipperary Education and
Training Board*

**Nationally agreed 1 March 2011
Amended 1 July 2013 in line with the provisions of the Education and
Training Boards Act, 2013**

INTRODUCTION

The *Code of Practice for dealing with complaints made by Parent/s, Guardian/s of a Student or by a Student (who has reached the age of eighteen) currently enrolled in a school/centre, against a Staff Member employed by an Education and Training Board (ETB)* was developed following discussions at national level between Education and Training Boards Ireland (ETBI) (formally the Irish Vocational Education Association (IVEA)) on behalf of member Education and Training Boards (ETBs) and trade unions representing ETB staff, to foster an environment where communication between parents, staff and school/college/centre/office management is open and positive.

Procedures are necessary to ensure fair treatment for all. It is necessary that procedures be agreed, known and observed in the interest of good relations in the educational, school and workplace environment.

This Code of Practice was formally agreed at national level between the parties concerned on 1 March 2011 with a view to addressing the concerns of all parties to the education process so that schools, colleges and centres for education function as efficiently and effectively as possible and with due respect to the entire school/college/centre/office community. This responsibility is exercised on a day-to-day basis by Principals of schools/colleges, Directors/Managers of centres for education and appropriate line manager/s within head office under the care of **Tipperary ETB. The procedure has been amended to reflect statutory obligations under the Education and Training Boards Act, 2013 and this version is the Procedure which should now be followed.**

Again, this Grievance Procedure supersedes all existing local procedures and the previous version of 31 March 2010.

This procedure will apply irrespective of whether the complaint was lodged before or after 1 July 2013.

It is the policy of Tipperary ETB to provide a fair, consistent and equitable mechanism for processing complaints by parents/guardians or students (who have reached the age of 18 years) against a ETB staff member and to do so in a manner that affords all concerned full rights in accordance with natural justice. This procedure outlines the procedures which should be followed by all – ETB, staff, parents/guardians and/or students over 18 years of age and/or their representatives, in the event of complaints being made against staff.

Investigations of complaints will be handled with sensitivity and due respect to the rights of both the complainant and the staff member concerned. Throughout this procedure, all communication between the staff member, parent/guardian and or student (who has reached the age of 18 years) must take place in an atmosphere that is calm, dignified and in a climate that respects the viewpoint of either party to the Complaints Procedure. This procedure is intended to resolve complaints outside of recourse to legal process.

It is understood that all complaints will be investigated with minimum delay and in accordance with principles of natural justice. Every effort will be made to adhere to the time limits prescribed in the procedure. The time limits laid down under the Formal Procedure may be extended by mutual agreement of the parties concerned, or by the person(s) appointed to manage/investigate the complaint, provided the grounds for extending the time limits are reasonable.

EXCLUSIONS

- (a) Complaints considered by the Principal/Director/appropriate line manager to be frivolous or vexatious
- (b) Anonymous complaints
- (c) Complaints which are appropriate to another Code of Practice/procedure.

- (d) Complaints which do not relate to the work of a staff member in a ETB school/college/centre/office
- (e) Complaints in respect of child abuse which are dealt with under separate guidelines and procedures issued by the Department of Education and Skills
- (f) Complaints which are the subject of legal proceedings
- (g) Complaints in relation to teacher/principal professional competence which should be processed under the Department of Education and Skills circular letter 59/2009.

GOOD PRACTICE

Where a complaint arises, the parties concerned (complainant, staff member/s and management representative/s) are encouraged to strive to understand the other party's position and should seek, as far as possible, a mutually acceptable solution through informal means.

Without prejudice to his/her right to invoke immediately the Formal Procedure, a parent/guardian /student (aged eighteen years or over) who believes s/he has been treated unjustly or unfairly is encouraged to raise his/her complaint, as a matter of first instance, through an informal approach with the staff member.

MEDIATION

Mediation, if appropriate, and subject to the agreement of the parties to the grievance, is not excluded by way of a mechanism to resolving complaints at informal or formal stages.

Any information disclosed in the course of mediation must remain within the mediation process. It must not be disclosed and cannot be used in furthering a complaint through this procedure or any other process and must remain confidential to the mediation process. In the event that mediation is unsuccessful, the Complaints Procedure can be re-invoked at the same stage and without prejudice to the parties having engaged in a mediated process.

THE PROCEDURE

Complaints, whether verbal or in writing, should be processed informally through stages 1 and 2 of the procedure and a copy of any written complaint be given to the staff member concerned.

The complainant will be informed if the complaint is amenable to processing within the terms of this procedure and if not, the reasons for this decision.

A complaint(s) may be withdrawn at any stage of the procedure. All complaints received will be entered in the complainant's file. Where the complaint is withdrawn, a note to this effect will be entered in the file.

Parties to a complaint do not require legal representation. A staff member may be accompanied by a trade union representative or friend at any meeting convened under this procedure. A parent/guardian/adult student may be accompanied by a friend or someone unconnected to the complaint.

Stage 1 – Self-initiated attempt at resolving the complaint

- 1.1 A parent/guardian/student (aged eighteen years or over) who wishes to make a complaint should, unless there is good and sufficient reason in the first instance, make an appointment to discuss the matter with the staff member concerned with a view to resolving the complaint. The staff member has the right to refer the complaint to the Principal and in this context, to respond to the Principal on the complaint. In such circumstances the complaint moves directly to stage 2.1. In an administration office context, if the matter cannot be resolved, the parent/guardian/adult student should seek an appointment with the Section/Department head. A copy of the Procedure should be made available to the parent/guardian/adult student.
- 1.3 If at this point the matter cannot be resolved, the matter should proceed to stage 2 ideally within a **maximum of ten working¹ days**.

Stage 2 – Facilitation meetings with the Principal/Head of Centre with a view to resolving the complaint

- 2.1 **A parent/guardian/student** (aged eighteen years or over) who is unable to resolve the complaint at stage 1 may seek an appointment to report and discuss the matter with the Principal/Head of the Centre with a view to resolving the complaint. The Principal/Head of Centre will arrange such a meeting. In some instances and where deemed appropriate by the Principal/Head of Centre, it may be necessary for the parties concerned (subject to mutual agreement of both parties to the complaint) to meet with the Principal/Head of Centre with a view to resolving the complaint. The Deputy may be nominated by the Principal to facilitate this stage of the process.

In either circumstance, such a meeting will take place within a **maximum of a further ten working days**.

Any documentation relating to the complaint should be provided to the parties no later than three days prior to the meeting/s with the Principal/Head of Centre.

The purpose of such meeting/s is to seek a resolution of the complaint to the satisfaction of the parties concerned.

¹ “Working days” are understood in a school context to be counted as days on which the school is open for student instruction

- 2.2 Following the facilitation process, the Principal/Head of Centre will communicate the outcome verbally to both parties. **In the event of the matter being resolved, the parties will be requested to sign a statement to the effect that the matter is concluded to the agreement of the parties concerned.**
- 2.3 If after stages 2.1 and 2.2 the complaint is still unresolved, the parent/guardian/adult student should be advised that they may raise the matter formally (in writing) with the ETB (under Stage 3).
- 2.4 In the case of a complaint against a Principal/Head of Centre, the parent/guardian/adult student should discuss his/her complaint with the Principal/Head of Centre. Meeting/s in relation to complaints against a Principal/Head of Centre may be facilitated by the Deputy Principal/Deputy Head of Centre. If the parent/guardian/adult student is unable to resolve the complaint with the Principal/Head of Centre, the complaint may be processed under Stages 3 and 4 of this procedure.

It is envisaged that the overwhelming majority of complaints will be resolved to the satisfaction of the parties to the complaint without recourse to progressive stages in the Procedure.

Stage 3 – Formal investigation of the complaint by an independent team

- 3.1 If the complaint** is not resolved at stages 1 or 2, then the parent/guardian/adult student should lodge the complaint in writing, with the ETB within **ten working days of the date of issue of the findings from stage 2.**
- 3.2 The ETB should formally acknowledge receipt of the complaint. A copy of the complaint should be supplied to the other party/parties to the complaint advising that the ETB is convening an investigation team and that further details will be advised concerning the date, time, venue etc. of the investigation meeting/s. An investigation team nominated by the employer² comprising two investigators drawn from the agreed panel (*see appendix 1*), in addition to an impartial recording secretary (drawn from the vocational education sector), will be convened by the employer for the purposes of conducting an official investigation of the complaint.
- 3.3 The investigation team shall:**
- (a) Supply the staff member with a copy of the written complaint and a copy of all other evidence submitted by the parent/guardian/adult student including any relevant material concerned to the facilitation process undertaken by the Principal/Head of Centre at Stage 2.2.
 - (b) Supply the parent/guardian/adult student with copy of all written documentation concerning the complaint supplied by the staff member and any relevant material concerned to the facilitation process undertaken by the Principal/Head of Centre at Stage 2.2.
 - (c) Supply both parties with a copy of the **terms of reference** under which the investigation will be conducted (*appendix 2*) including a reasonable **“no later than”** timeframe within which the parties to the complaint will be furnished with the official investigation report.
 - (d) Be responsible for keeping all parties apprised of developments appropriate to the ongoing investigation.
 - (e) Conduct the investigation in accordance with the specified terms of reference.
- 3.4 Following the conclusion of the investigation process, the investigation team will provide a written report for Chief Executive Officer (CEO) or a person nominated by the CEO. The**

² All practical arrangements for the conduct of the investigation (at stage 3) will be made through the HR Department of the ETB

investigation report shall advise under each element of the complaint as to whether the complaint is upheld or not upheld.

- 3.5 **The CEO or nominated person is responsible for furnishing a copy of the report to the parties concerned within five working days.** Covering correspondence will advise a right of appeal to the Chief Executive Officer of the ETB or a person nominated by the CEO, and include the terms of reference of the appeal procedure (*appendix 3*).
- 3.6 Appeals (and all supporting documentation) must be marked “*private and confidential for the attention of the Chief Executive Officer (or the person so advised as the CEO’s nominee)*” and submitted by registered post within a maximum of **10 working days of the issue date of the investigation report by the CEO or his nominee** to the parties to the complaint.
- 3.7 Following the expiration of the appeal period, the CEO of the ETB will take appropriate action based on the findings of the report and such action may include initiating the appropriate disciplinary procedure.

Stage 4 – Appeal of the investigation report finding/s to the CEO of the ETB

- 4.1 **In the event that an appeal is lodged with the Chief Executive Officer of the ETB or a person nominated by the CEO, the terms of reference for the appeal stage outlined in appendix 3 including the appropriate timeframes should be followed.** The appeal hearing shall be convened **within fifteen working days** of the receipt of the appeal letter and supporting documentation.
- 4.2 **The CEO or his/her nominee (acting in the capacity of Appeals Officer) shall convey his/her decision, in writing,** to the appellant(s) within **five** working days of the decision being taken.
- 4.3 The decision of the CEO under the Complaints Procedure shall be final.
- 4.4 Any disciplinary process initiated by the ETB, will be undertaken under the terms of the³ appropriate disciplinary procedure for staff concerned.

³ Department of Education and Skills circular 59/2009 in respect of *Procedures for the Suspension and Dismissal of Teachers and Principals*

Protection and Support

Tipperary ETB is committed to providing a healthy working and learning environment in its schools, colleges, centres and offices. Students, parents, guardians and staff will be protected from discrimination or victimisation for filing a complaint or assisting in an investigation.

Retaliation against a student on whose behalf a complaint has been lodged is considered a disciplinary offence. Equally, a malicious complaint made against a staff member will be treated as misconduct under the school/college/center's disciplinary procedures.

Record Keeping

Any documentation in respect of the complaint at stages 1 and/or 2, including a covering statement of the outcome reached at each stage, will be treated as confidential and retained by the school/centre in a dedicated complaints' file established for such purpose.

Any documentation in respect of the complaint at stages 3 and/or 4, including a covering statement of the outcome reached at each stage, will be treated as confidential and retained by the ETB in a dedicated complaints' file established for such purpose.

Where a complaint has been rejected or deemed unfounded, all documentation relating to complaint should be removed from any personnel file of the staff member concerned. It will be retained in the dedicated complaints' procedure file in accordance with ETB Data Protection/Retention policy.

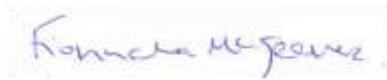
Review

This Complaints Procedure will arise for review by the parties to this agreement at national level no later than two years from the official implementation date.

ETB Adoption Date

The *Code of Practice for dealing with complaints made by Parent/s, Guardian/s of a Student or by a Student (who has reached the age of eighteen) currently enrolled in a school/centre, against a Staff Member employed by an Education and Training Board (ETB)* has been formally adopted on **Tuesday 10th September, 2013.**

Signature:



Chief Executive Officer

Appendix 1 – Panel of Investigators (for reference to Stage 3 investigations)

Select one nominee from panel A and one nominee from panel B in accordance with the protocol advised below.

Contact details for investigators are available from ETBI head office tel. 01 4966033 or from respective trade unions subscribing to this Code.

| Panel A – Management Nominees | Panel B - Union nominees |
|-------------------------------|--|
| | <i>Subpanel A – Nominated by ASTI:</i> |
| 1 Mr Rodger Curran | 1. Mr Michael Corley |
| 2. Ms Deirdre Frawley | 2. Ms Niamh Walker |
| 3. Mr Gearoid O’Bradaigh | <i>Subpanel B – Nominated by IMPACT/UNITE/SIPTU:</i> |
| 4. Mr Barra O’Brian | 1. Mr Pat Leyden |
| 5. Mr Pat O’Connor | 2. Mr Caoimhín O’ Tuathail |
| 6. Ms Josephine O’Donnell | <i>Subpanel C – Nominated by TUI:</i> |
| 7. Mr Sean O’Longáin | 1. Mr Tommy Glynn |
| 8. Dr Barney O’Reilly | 2. Ms Dympna Reilly |
| | 3. Ms Marion Drennan |
| | 4. Mr Eddie O’Riordan |

Protocol for selection from Panels of Investigators under Stage 3 Formal Procedure

Nominees comprising both panels A and B are fully endorsed in their capacity to act as independent investigators empanelled for the purpose of conducting investigations in accordance with Formal Procedure Stage 3. The role of the investigator is not an advocacy role but an independent investigation role irrespective of the body nominating them.

There is **no provision** for the complainant (i.e. parent/guardian/adult student) or the staff member concerned to a complaint proposed for investigation at Formal Stage 3, to reject a nominee proposed from either or both panels (Panel A or B) save in the very exceptional circumstance where an individual drawn from a panel is related to, or a personal friend of, either the complainant or the staff member concerned to the complaint. In such circumstances it is the responsibility (whether complainant or staff member) to disclose such interests by contacting the ETB Human Resources Department by phone/email/in writing **prior** to any investigation commencing so as to facilitate the selection, by the ETB as employer, of an alternative investigator to conduct the Formal Stage 3 investigation.

Selection from the panel will be undertaken by the ETB as employer in accordance with this protocol:

- Where an investigation is required under Formal Stage 3, one nominee from Panel A (management nominees) **and** one nominee from Panel B (union nominees) will be selected to comprise the investigation team.

For management nominees on Panel A

- For management nominees, select a nominee (commencing at number 1 and sequentially thereafter for other investigations), having regard to such matters as the investigator's availability and geographical distance.

For union nominees on Panel B

- Where a staff member is a member of a specified trade union subscribing to this Code, the nominee will be drawn from the respective subpanel (under Panel B) concerned.
- Where a staff member is not a member of a specified trade union, the nominee can be drawn from the first subpanel (and thereafter for subsequent investigations working down through the names on the full Panel B listing) having regard to the investigator's availability and other matters of geographical distance.

Other related matters:

New unrelated complaints: In circumstances where new complaints may arise in the future, the next listed nominee on either Panel A or Panel B (including the subpanels where applicable), will be contacted and selected having regard to the investigator's availability and geographical distance.

Fee structure for investigators: The parties to this Code recommend that a fee not exceeding €650 gross, be paid to each investigator conducting an investigation plus appropriate rates for travel and subsistence. Costs arising from the preparation of an investigation report will be considered to be part of the fee of €650 gross and not an additional cost. The preparation of the investigation report should be undertaken by agreement between the two investigators comprising the investigation team.

Appendix 2 - Terms of Reference for Conducting an Investigation under Stage 3 of the *Code of Practice for dealing with Complaints made by Parent/s, Guardian/s of a Student or by a Student (who has reached the age of eighteen) currently enrolled in a school/centre, against a Staff Member employed by Tipperary Education and Training Board (ETB).*

Scope of Investigation:

The independent investigation to be conducted by <name of investigators> will cover the specific complaint of <nature of complaint> made by <name of Complainant(s)> against <name of respondent(s)>. At the conclusion of the process, the investigation report shall advise under each element of the complaint as to whether the complaint is upheld or not upheld.

The complaint is made under the *Code of Practice for dealing with complaints made by Parent/s, Guardian/s of a Student or by a Student (who has reached the age of eighteen) currently enrolled in a school/centre, against a Staff Member employed by an Education and Training Board (ETB) (adopted by Tipperary ETB on X date).*

Investigation procedure:

General

1. The investigation will at all times adhere to the principles of natural justice and fair process.
2. During the course of the investigation all parties are required to respect the privacy of all others involved and to treat all aspects relating to it with total confidentiality. The investigators will assure all parties of the confidentiality of the investigation insofar as that is practicable for the proper and fair conducting of the investigation or save where the investigators are required to disclose any information pursuant to an order of the Court or the provision of the Data Protection Acts 1988 and 2003.
3. On commencement of the investigation, the investigators will be in sole control of the procedures/process and shall be the final arbitrators on any matters of procedure raised with them. During the course of the investigation, the investigators will maintain contact with a nominated representative within Tipperary ETB and may seek relevant information from and/or the assistance of that person in line with the demands of the investigation. For the purpose of this investigation the liaison person will be <member of HR team>.
4. The investigators may seek any information or raise any issue with the parties, which the investigators consider relevant to investigating the complaint.
5. Refusal or failure to co-operate by any party with the investigation will not prevent the investigators issuing a report based on the information available.

Investigation Process

6. The complainant will provide a written statement of the complaint and any supporting documentation they may wish to rely on to support their case.
7. The staff member will be furnished with this documentation and advised (by covering letter) of a date by which their written response should be remitted to the investigators.
8. In the course of the investigation, the investigator will meet with the complainant and any of his/her witnesses or relevant person(s); and then with the staff member and any of his/her witnesses or relevant person(s). It may be necessary for witnesses previously interviewed or additional persons named in the course of the investigation to be (re)interviewed with a view to establishing facts or gathering additional information. The investigation team may decide also to convene a meeting/s of both parties.

9. A record of all meetings will be taken by an impartial recording secretary drawn from the vocational education sector. All participants will be provided with a written record of their meeting and will be given an opportunity to verify and agreed its content prior to its being made available to other relevant parties to the investigation. The investigators will arbitrate on any element of the record of the meeting/s which is disputed.
10. Parties to a complaint do not require legal representation. A staff member may be accompanied by a trade union representative or friend at any meeting convened under this procedure. A parent/guardian/adult student may be accompanied by a friend or someone unconnected to the complaint. Investigators should be informed of the names of any person/s accompanying the staff member or complainant **three days prior to the first investigation meeting/s**.
11. Both parties will be provided with a written record of all meetings, any documentation or material in relation to the complaint and with all other information upon which the investigators may rely upon in arriving at their decision. Parties to the complaint will be given an opportunity to respond in writing, or if necessary in person, to this material before the investigators consider the evidence.
12. On completion of the investigation, having duly considered all the evidence submitted and representations made, the investigators will produce a written report for the CEO of *Tipperary ETB*, or a person nominated by the CEO, containing the findings of the investigation. A copy of the report will be given by the CEO or nominated person to the complainant and the staff member/s.
13. **The investigation report will set out:**
 - a. the details of the original complaint
 - b. the staff member/s response
 - c. any documentation relating to previous stages of the procedure
 - d. witness statements/evidence
 - e. the facts of the investigation
 - f. the findings arising from the investigation.
14. The investigators will furnish the report as quickly as practicable with an expected timeframe of three weeks after the investigators confirm that the investigative stage of the process has concluded.

END.

Appendix 3 - Terms of Reference for Stage 4 Appeals in accordance with *The Code of Practice for dealing with complaints made by Parent/s, Guardian/s of a Student or by a Student (who has reached the age of eighteen) currently enrolled in a school/centre, against a Staff Member employed by a Education and Training Board (ETB)*

Formal Procedure Stage 4 states:

“In the event that an appeal is lodged with the Chief Executive Officer of the ETB or a person nominated by the CEO, the terms of reference for the appeal stage outlined in appendix 3 including the appropriate timeframes should be followed”.

Terms of reference for appeals under Formal Procedure Stage 4

It is open to either party to a complaint to appeal the decision from Formal Procedure Stage 3 to Formal Procedure Stage 4 which will be heard by the Chief Executive Officer of the ETB or his/her nominee.

1. What constitutes grounds for an appeal?

Importantly, it is not the role of the CEO or his/her nominee acting in the capacity of an Appeals Officer (at stage 4) to re-investigate the original complaint/s previously investigated at stage 3 of the procedure or indeed incidents giving rise to that complaint/s. Rather, s/he will review the appeal on the grounds presented by the appellant in response to the findings or conduct of the investigation undertaken at stage 3.

In this regard, examples of appeal grounds may include:

- (a) The provisions of the agreed procedures were not adhered to
- (b) At the time, all the relevant facts were not ascertained
- (c) At the time, all the relevant facts were not considered or were not considered reasonably
- (d) The appellant concerned was not afforded a reasonable opportunity to answer the allegation
- (e) The finding is not supported by the evidence
- (f) The general principles of procedural fairness were not applied.
- (g) And other ground/s for appeal as may be permitted by the Appeals Officer in line with good practice.

2. Activating an appeal

In activating an appeal, the appellant should lodge the appeal, in writing, marked ***“private and confidential for the attention of the Chief Executive Officer (or the person so advised as the CEO’s nominee)”*** and submit the appeal (with all supporting documentation) **by registered post within a maximum of 10 working days of the issue date of the investigation report (referenced in 3.4).**

Appeal grounds should be clearly stated and specific supporting examples should be provided under the appeal grounds and where more than one appeal ground is specified, supporting examples should be provided for each appeal ground.

3. Responding to appeal documentation

On receipt of the appeal and supporting appeal ground/s’ documentation, the CEO or his/her nominee (i.e. the Appeals Officer) should:

- (1) Review the appeal and supporting documentation.
- (2) In line with the principles of procedural fairness, a review of the papers to the appeal by the Appeals Officer, will result in the arrangement of an appeal hearing date where the appellant (and his/her representatives) and others as may be determined by the Appeals Officer, will be requested to attend an appeal hearing on a specified date determined by the Appeals Officer.

- (3) The appeal hearing shall be convened **within fifteen working days** of the receipt of the appeal letter and supporting documentation.
- (4) It will be the responsibility of the ETB (through the HR Department) to make all necessary practical arrangements for the appeal hearing to be convened on the specified date - including advising the party/parties to the appeal (in writing and/or by phone) of the details of the date, time and venue arranged.

4. How an appeal hearing generally operates

The overall objective is to hear the appeal against the finding/s of the investigation or investigation report undertaken at Stage 3. Parties to a complaint do not require legal representation. A staff member may be accompanied by a trade union representative or friend at any meeting convened under this procedure. A parent/guardian/adult student may be accompanied by a friend or someone unconnected to the complaint.

The appellant (and his/her representative/s) are provided with an opportunity to speak to their written statements of appeal.

The Appeals Officer may also wish to ask some questions. Again, the appeal hearing will not be a review of the investigation but a consideration of the stated grounds of appeal.

5. Finding/s/Decision arising from an appeal

The Appeals Officer shall deliver his/her decision in writing to the appellant **within five working days of the date of the appeal hearing**. This concludes the provision for appeal under the procedure.

Any disciplinary process initiated by the ETB, will be undertaken under the terms of the⁴ appropriate disciplinary procedure for staff concerned.

Where a complaint has been rejected or deemed unfounded, all documentation relating to complaint should be removed from any personnel file of the staff member concerned. It will be retained in the dedicated complaints' procedure file in accordance with ETB Data Protection/Retention policy.

END

ComplaintsProcedureThirdParty ETBFinal1July2013

⁴ Department of Education and Skills circular 59/2009 in respect of *Procedures for the Suspension and Dismissal of Teachers and Principals*