Public Schools Branch

OPERATIONAL POLICY

Prevention and Response to Sexual Misconduct by Employees (Sexual Misconduct Policy)	
Policy Section **School and Workplace Health and Safety**	*Policy Number* **611**
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Replaces: • Portions of PSB Operational Policy 605 – Safe and Caring Learning Environments and PSB Operational Procedure 605.1 – Safe and Caring Learning Environments	

1.0 Purpose

The purpose of this policy is to support a safe learning environment where students thrive. This policy aims to prevent sexual misconduct from taking place and to create a thorough and fair process to investigate complaints of sexual misconduct. It also ensures that students have access to appropriate supports and accommodations.

The Public Schools Branch recognizes the rights of children and youth and affirms the United Nations *Convention on the Rights of the Child*.[1]

2.0 Application

This policy covers sexual misconduct by employees, post-secondary trainees, and volunteers towards students in the Public Schools Branch, including on school premises, by electronic means, or in connection with school-sponsored activities.

3.0 Policy Statement

All students have the right to a safe, caring, inclusive, and respectful learning environment that is free from any form of sexual misconduct.

Students, parents, or other individuals (third parties) have the right to make a complaint of sexual misconduct under this policy. The Public Schools Branch will also initiate a complaint process when

[1] The Convention on the Rights of the Child is available here: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child?fbclid=IwAR35cVUouzhmgWieqVBgZYcB2B0AxOmow0WCMu4zy7elWfQD-VMAwGkORks See Article 3 (best interests of the child), Article 12 (respect for the views of the child), Article 19 (protection from violence, abuse and neglect), Article 28 (right to an education), Article 29 (aims of education) and Article 34 (protection from sexual abuse).

an employee reports information about sexual misconduct in the electronic tracking system. Information about the complaint process is at Section 10.

The Public Schools Branch recognizes that employees, post-secondary trainees, and volunteers hold positions of trust and authority because their roles and responsibilities give them power and influence over students.

4.0 Prevention

The Public Schools Branch is committed to preventing sexual misconduct by delivering annual education and training on how to recognize signs of sexual misconduct, the duty to report, and expectations for professional boundaries and conduct. Prevention is also supported by guidance in Operational Procedure 611.1 regarding examples of sexual misconduct and grooming to support early detection, and by other Public Schools Branch policies, including the Misconduct Towards Students Policy (###).

The Public Schools Branch's electronic incident reporting system will track all reported incidents, whether or not they fall under this policy. When a complaint of sexual misconduct is received, the internal electronic tracking system will be reviewed to identify any related behaviours or incidents.

The Public Schools Branch will work collaboratively with other agencies as part of the Child Sexual Abuse Protocol to serve the best interests, rights, safety, and needs of students.

5.0 Parameters

This policy is established in accordance with the *Education Act* and the *Child, Youth and Family Services Act*.

It also recognizes other legal obligations related to the *Criminal Code of Canada*, the *Child and Youth Advocate Act,* the United Nations *Convention on the Rights of the Child*, and the United Nations *Declaration on the Rights of Indigenous Peoples*.

Any decisions about employees, including disciplinary action, will comply with an applicable collective agreement.

6.0 Definitions

6.1 **Administrator** – A Principal or Vice Principal of a school.

6.2 **Complainant** – An impacted student, parent, or third-party who makes a complaint of sexual misconduct.

6.3 **complaint** – The sharing of information about sexual misconduct, including information shared verbally, in writing, or through the complaint form at Appendix A.

6.4 **complaint form** - The Sexual Misconduct Complaint Form at Appendix A.

6.5 **culturally responsive** – Recognizing an individual's cultural, social, and linguistic

identities and experiences.

6.6 **electronic means** – Any communication or exchange of information or images online or using technology including social media, text messages, and artificial intelligence (AI) tools.

6.7 **employee** – For the purpose of this policy, an employee is any individual working at school premises or at a school-sponsored activity, including contractors and individuals employed by other government departments and agencies.

6.8 **grooming** – A process involving a series of interactions between an employee, post-secondary trainee, or volunteer and a student, in person, in writing, or by electronic means, which allows the employee, post-secondary trainee, or volunteer to gain trust and manipulate a student, including in some way that is sexual in nature, which may prepare a student for other forms of sexual misconduct.

6.9 **impacted student** – A student who has experienced sexual misconduct or a student identified in a complaint of sexual misconduct.

6.10 **Investigative Team** – Individuals appointed by the Public Schools Branch Director of Human Resources for the purpose of the Public Schools Branch investigating a complaint of sexual misconduct, not referring to investigations by law enforcement or Child Protection Services.

6.11 **parent(s)** – For the purpose of this policy, parent includes a legal guardian and any person in a custodial role for a student;

6.12 **post-secondary trainee** – A person attending school premises or school-sponsored activities as part of post-secondary education and training.

6.13 **reasonable grounds to suspect a child is in need of protection** – Information that an average person, using normal and honest judgment, would need to make a decision to report, including observations of sexual misconduct or information received from a student, parent, or other person.

6.14 **Respondent** – Any person against whom a complaint of sexual misconduct is made under this policy.

6.15 **school premises** – A building or property under the management or operation of an education authority that is used in whole or in part for the instruction of students.[2]

6.16 **school-sponsored activity** – Any activity, whether conducted on or off school premises, that is sponsored, recognized or authorized by an Administrator or the Public Schools Branch. For clarity, this includes transportation and travel to and from school-sponsored activities.

6.17 **sexual assault** – Any sexual contact made by a person against a student. This includes a broad range of behaviours including touching, kissing, or sexual acts.

[2] This policy does not apply to non-Public Schools Branch operations, events or activities that occur on school premises.

6.18 **sexual harassment** – Any conduct, comment, gesture or behaviour of a sexual nature that is known or ought reasonably to be known to be offensive or intimidating. Sexual harassment includes but is not limited to sexual solicitations or advances, sexually suggestive remarks, jokes or gestures, and sharing inappropriate images.

6.19 **sexual misconduct** – Behaviour of a sexual nature that is committed by force, intimidation, coercion, or manipulation by an employee, post-secondary trainee, or volunteer towards a student in person, in writing, or by electronic means and includes:

- Distribution of an intimate image in contravention of the *Intimate Images Protection Act*, R.S.P.E.I 1988, Cap I-9.1;
- Grooming;
- Indecent exposure;
- Sexual assault;
- Sexual exploitation;
- Sexual harassment;
- Stalking;
- The attempt to commit an act of sexual misconduct;
- The threat to commit an act of sexual misconduct;
- Voyeurism.

6.20 **student** – a person enrolled in an education program with the Public Schools Branch or required to attend under the *Education Act*.

6.21 **trauma-informed** – An approach that recognizes the connections between violence, trauma, negative health outcomes and behaviours to increase psychological safety, control, and resilience for individuals making complaints or involved in a complaint process.

6.22 **volunteer** – A person who undertakes, without pay, a designated task that supports a school-sponsored activity.

6.23 **voyeurism** – Observing or recording a person for a sexual purpose in circumstances where there is a reasonable expectation of privacy.

7.0 Responsibilities

Everyone in a school or involved in a school-sponsored activity is responsible for preventing and responding to sexual misconduct.

Public Schools Branch

The Public Schools Branch is responsible for implementing this policy, which includes:

- ensuring Administrators, employees, post-secondary trainees and volunteers are informed of the policy and advised of their responsibilities;
- providing leadership in the prevention of sexual misconduct;
- providing education and training on sexual misconduct; and
- taking disciplinary action when an investigation determines sexual misconduct has taken place.

Director of Human Resources

The Director of Human Resources provides support and oversight for the investigation process when a complaint is made under this policy. Responsibilities include:

- ensuring internal reporting is completed using the Sexual Misconduct Incident Report or another approved form in the electronic tracking system;
- conducting a screening assessment of complaints;
- reviewing the electronic tracking system for additional information about other incidents;
- appointing members of an Investigative Team;
- providing opportunities for education and training for Investigative Teams on investigating sexual misconduct;
- ensuring Respondents are kept informed during the complaint process, which may include connecting Respondents to support services;
- ensuring that the parties to a complaint are informed of the outcome of an investigation in writing in a timely fashion; and
- considering any recommendations from an investigation.

Director of Student Services

The Director of Student Services also provides support for the investigation process when a complaint is made under this policy. Responsibilities include:

- providing leadership and direction to Administrators, school counsellors, and the Student Services team in implementing the policy consistently across all schools;
- ensuring students and families are kept informed in a timely manner during the complaint process;
- connecting students and families to support services;
- overseeing the response protocol when allegations involve student safety concerns;
- working with Administrators and the Investigative Team to ensure immediate measures to protect students are taken, including appropriate documentation, notification, and referral processes (e.g., Child Protection Services, Police, Human Resources).

Administrator

Administrators are responsible for providing leadership at the school level for the implementation of this policy. These responsibilities include:

- providing information about this policy and complaint process;
- accepting reports from employees about sexual misconduct and ensuring internal reporting in the electronic tracking system;
- Accepting complaint forms from Complainants.

Investigative Team

The Investigative Team is responsible for:

- conducting a procedurally fair, culturally responsive, and trauma-informed investigation;
- interviewing and gathering evidence from the Complainant, the Respondent, and any witnesses;
- preparing the investigation report;
- determining whether a complaint is substantiated; and
- making recommendations to the Director of Human Resources, if requested.

Employees

All employees are responsible for:

- reporting sexual misconduct;
- cooperating with the work of an Investigative Team; and
- contributing to efforts to provide support, services, or accommodations to students related to this policy.

An Administrator, the Director of Human Resources, or the Director of Student Services may designate other employee of the Public Schools Branch to carry out responsibilities under this policy. Designated alternative employees must have the required training and experience and will be approved in advance by the Director of the Public Schools Branch.

8.0 Mandatory Reporting to Other Agencies

All Public Schools Branch employees have a duty to report to law enforcement and Child Protection Services if they witness sexual misconduct, receive information from a student, parent, or other person about sexual misconduct towards a student, or have reasonable suspicion that sexual misconduct has occurred or is likely to occur.

The Public Schools Branch must contact police if the nature of a complaint may be criminal. The person responsible for contacting the police will be whoever receives the complaint and is first available, to avoid delay and may include an Administrator, the Director of Human Resources, the Assistant Director, or the Manager of Policy.

If a student or other member of the school community is at imminent risk of harm, any employee with such information must immediately contact police.

Any employee of the Public Schools Branch who has reasonable grounds to suspect that a student is in need of protection, as defined in the *Child, Youth and Family Services Act,* has a mandatory duty

to report the circumstances to the Director of Child Protection. Additional information about this obligation is contained in Operational Procedure 611.1.

In addition to any reporting to Child Protection Services and police, any employee who witnesses sexual misconduct, receives information from a student, parent, or other person about sexual misconduct towards a student, or has reasonable suspicion that sexual misconduct has occurred or is likely to occur, must report the information to an Administrator or to the Director of Human Resources as soon as possible. The Sexual Misconduct Incident Report, or other form adopted by the Public Schools Branch, must be prepared as part of the electronic tracking system.

The Public Schools Branch will not interfere with a law enforcement or Child Protection Services investigation. In some cases, the Public Schools Branch will wait to begin an investigation until a police and/or Child Protection Services investigation concludes or until any legal proceedings conclude. Once a Public Schools Branch investigation is underway, if new information provides reasonable grounds to suspect a child is in need of protection or that behaviour may be criminal, the investigation must stop, and the information must be reported to police and/or Child Protection Services.

Submitting a complaint under this policy does not affect an individual's right to file a formal police report or to pursue other legal options.

Other Reporting

The Director of the Public Schools Branch, or the Assistant Director, will notify the Minister of Education and Early Years when a complaint of sexual misconduct is received.

If a complaint is received regarding a teacher, a report must be made to the Registrar within five (5) business days.

Notice will be given to the Child and Youth Advocate if a complaint is substantiated by an Investigative Team, in accordance with Sections 20 and 21 of the *Child and Youth Advocate Act*.

9.0 Supports Available to Students

The Public Schools Branch is committed to providing age and developmentally appropriate, and culturally responsive supports, services, and accommodations to students related to incidents of sexual misconduct. Students will be asked what support they need or want to access.

Some of the supports available include the following:

- Counselling (e.g., by school counsellor, student well-being team, or other service provider, including those providers that address a student's culture, heritage, identity, experiences, perspectives, background and learning needs);
- Accommodations, e.g., academic, class schedule modification, academic support for missed time, and language services;
- Safety planning; and
- Referrals to community services.

The Public Schools Branch recognizes the importance of providing affirming, inclusive and culturally responsive support for students and employees. This could involve community groups.

The services, supports, and accommodations offered will be based on the individual student's needs and the circumstances of a complaint. An impacted student will be consulted in planning and will have the opportunity to express their needs and preferences about safe spaces, communication planning, and other options regarding the learning environment.

Language/translation needs or other culturally responsive supports will be considered in the planning and delivery of services for students and/or parents.

During an investigation, the Investigative Team will consider any reasonable requests for support, such as reimbursement for required transportation.

Supports will also be available at the complaint screening stage and at the conclusion of an investigation.

10.0 Complaint Process

The Public Schools Branch is committed to conducting timely, trauma-informed, culturally responsive, and procedurally fair investigations of complaints of sexual misconduct. This includes delivering a complaint process that adheres to principles of equity and human rights. The complaint process has four steps, as follows:

Step 1: Making a Complaint

Step 2: Complaint Screening

Step 3: Investigation by an Investigative Team

Step 4: Public Schools Branch Decision.

Additional information is contained in Operational Procedure (insert ###).

Step 1: Making a Complaint

The complaint process begins when either a complaint is received by the Public Schools Branch from a Complainant or when an employee reports potential sexual misconduct using the Sexual Misconduct Incident Form or another approved form in the electronic tracking system.

If a student or parent wants to make a complaint, a Complaint Form, a verbal report of concerns delivered in person or by phone, an email, or another form of written complaint will be accepted as a complaint. A complaint may be made to an Administrator or to the Director of Human Resources.

If a complaint involves an Administrator, it must be submitted to the Director of Human Resources.

An Administrator or the Director of Human Resources will acknowledge receipt of a complaint from a Complainant and will notify the Director of Student Services.

Step 2: Complaint Screening

The Director of Human Resources, with assistance from others, including external service providers where needed, will conduct a screening of complaints of sexual misconduct. The purpose of the screening is to decide if a complaint falls under the Sexual Misconduct Policy.

Outcomes of a screening process include the following:

- a complaint is investigated by an Investigative Team;
- a complaint is transferred to a different process, such as under another Public Schools Branch policy; or
- a complaint is screened out when it does not allege conduct that could be sexual misconduct and does not transfer to any other Public Schools Branch process.

If a complaint is transferred or dismissed, the Complainant and the impacted student, if they are different people, will be notified and offered support and information to understand the screening decision.

When a complaint is screened to be investigated, the Director of Human Resources will inform the Complainant and the Respondent within three (3) business days.

Step 3: Investigation by an Investigative Team

The Director of Human Resources will appoint an Investigative Team with a minimum of two (2) people. This team may consist of employees of the Public Schools Branch or external professionals. Once the Investigative Team has been appointed, contact will be made with the parties within five (5) business days to share information about the investigation process.

When determining the composition of an Investigative Team, the Director of Human Resources will consider the nature of the allegations and the required experience and training for members of the Investigative Team, including with respect to conducting investigations, interviewing children, and trauma-informed practices. Other considerations such as gender, diversity, and cultural competence may also be considered.

The overall timeline for an investigation will vary depending on several factors including the complexity of the issues, the number of allegations, and whether the Public Schools Branch is waiting for an external investigation by police or Child Protection Services to conclude. All parties must be given the opportunity to present evidence in relation to the allegations of sexual misconduct as part of an impartial and procedurally fair investigation.

When interviewing any student, the student's age and stage of development must be taken into consideration before conducting the interview or sharing information with the student. A student's cultural background may also be considered, as appropriate, to ensure respect and dignity during interviewing. The Investigative Team should consider the least intrusive means of gathering evidence from or about students, including alternatives to multiple interviews.

At the end of the investigation, the Investigative Team will submit a final report to the Director of Human Resources.

Additional information on procedural fairness is contained in Operational Procedure (###).

Step 4: Public Schools Branch Decision

After reviewing the report by the Investigative Team, the Director of Human Resources, in consultation with the Director of the Public Schools Branch and the Director of Student Services, will determine the appropriate response, including whether any corrective or remedial measures are required.

The Director of Human Resources in consultation with the Director of Student Services will notify the Complainant and Respondent of the results of the investigation in writing.

11.0 Behaviour of a Sexual Nature

This policy applies to a broad range of behaviours of a sexual nature that would violate the sexual integrity of a student, including communication by electronic means. Additional guidance on what the policy covers is in Operational Procedure 611.1.

Determining whether behaviour is sexual must be based on all the circumstances to avoid assessing individual behaviours in isolation. Some allegations about sexual activity or about statements with explicit sexual words are clearly sexual in nature. Other conduct or comments may be subtle but still could have a sexual meaning, which would be determined in an investigation. Some of the factors to consider include the following:

- The student's experience and interpretation of the behaviour;
- If there is physical contact, the part of the body touched;
- The combination of any physical contact with body language, gestures, and words used, including if conduct or comments are repeated; and
- Whether there is a reasonable educational, health, or safety reason for the behaviour.

Whether conduct is sexual is not determined based on the intent of the Respondent. Conduct must be considered objectively in light of all the circumstances, considering a student's age and development.

Single incident or a pattern

Sexual misconduct may be a single incident, or it may involve inappropriate conduct from a series of incidents. This means that some behaviour or behaviours on their own may not be considered sexual, but if repeated or combined with other behaviours, the nature of these interactions could constitute sexual misconduct.

Circumstances that may not be sexual in nature

There will be circumstances when behaviours are not sexual misconduct, such as the following:

- Physical force or touch, only to the extent necessary, for the personal safety of students, or the protection of the learning environment, e.g., playground safety, first aid, accident prevention, or putting on sunscreen, if the student is unable to do so;

- Patting the back, holding a hand, hugging, or other comfort for a student, provided it is consistent with any known wishes of the student and appropriate in the situation;
- Assisting with personal care to the extent that a student is not able to perform the tasks independently;
- Remarks that are pedagogically and anatomically appropriate (for example, terms used in health classes);
- Accidental or inadvertent physical contact during a school-sponsored activity, including gym; and
- Instruction, coaching, and physical activities that are part of a sports program and responsible play.

12.0 Interim Measures

When a complaint of sexual misconduct is received, the Public Schools Branch may impose interim measures to ensure the safety and protection of students and to reduce contact between the parties.

Interim measures will be assessed on a case-by-case basis based on the recommendations from the Director of Human Resources or the Director of Student Services and may include administrative leave.

Interim measures may be requested by either a Complainant or a Respondent or may be recommended by the Director of Human Resources.

Interim measures will be consistent with an applicable collective agreement, without agreement by the union.

13.0 Other Violations

It is also a violation of this policy for an employee in a position of trust and authority to engage in sexual behaviour towards a student within two (2) years of graduating or no longer being enrolled as a student. Complaints of this nature will be investigated pursuant to the Sexual Misconduct Policy.

14.0 Protection Against Reprisal

No student, witness or employee will face reprisal or negative consequences for exercising their rights under this policy in good faith or for participating in any process. Any act of reprisal or threat of reprisal against a student, witness, or employee violates this policy.

15.0 Confidentiality

All complaints under this policy must be treated as confidential by everyone involved, except for the reporting obligations to the Director of Child Protection or police, addressed at Section 8.

Students, employees, and any other members of the school community must keep information about a complaint of sexual misconduct confidential except when disclosure is necessary to make

a complaint of sexual misconduct under this policy, to cooperate in an investigation, or as otherwise required by law.

Records of a complaint and any supporting documentation will be kept in a confidential file by Human Resources. Only in the event of discipline will any record of the complaint be kept in the applicable personnel file.

16.0 Annual Reporting

In accordance with the *Education Act*, the Public Schools Branch must include in its annual report information about this policy without individually identifying information of any person.

17.0 Review

The Public Schools Branch shall review this policy at least once every three years and when directed to do so by the Minister. The Public Schools Branch will consult with the Office of the Child and Youth Advocate, students, and the public as part of the policy review process.

18.0 Appendices

Appendix A - Sexual Misconduct Complaint Form

Appendix B – PSB Sexual Misconduct Incident Report Form

19.0 Cross reference

Education Act
PSB Operational Policy 505 – Respectful Workplace.
PSB Operational Policy 605 – Safe and Caring Learning Environments
PSB Operational Procedure 605.1 – Safe and Caring Learning Environments
PSB Operational Policy 403 – Race Relations, Cross Cultural Understanding and Human Rights in Learning
PSB Operational Procedure 403.1 – Race Relations, Cross Cultural Understanding