

## Public Schools Branch

### OPERATIONAL POLICY

SEXUAL MISCONDUCT POLICY	
<i>Policy Section</i>	<i>Policy Number</i>
<i>Pages</i>	<i>Approved Date</i>
<i>Reviewed Date</i>	<i>Effective Date</i>
<b>Replaces:</b> <ul style="list-style-type: none"><li>Portions of PSB Operational Policy 605 – Safe &amp; Caring Learning Environments and PSB Operational Procedure 605.1 – Safe and Caring Learning Environments</li></ul>	

#### 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 creates 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*.<sup>1</sup>

#### 2.0 Application

This policy covers sexual misconduct towards students in the Public Schools Branch by employees, post-secondary trainees, and volunteers on school premises or involved in school-sponsored activities. For clarity, this includes transportation and travel to school-sponsored activities. Employees may include individuals employed by other government departments and agencies.

#### 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.

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 Island students.

#### 4.0 Parameters

<sup>1</sup> The Convention on the Rights of the Child is available here: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child?fbclid=IwAR35cVUouzhmgWiegVBgZYcB2B0AxOmow0WCMu4zy7elWfQD-VMAwGkORks>.

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

Following the *Child, Youth and Family Services Act*, any employee who has reasonable grounds to suspect that the safety or well-being of a child is endangered, based on the definition of a child in need of protection, has a mandatory duty to report the circumstances to the Director of Child Protection and to police. Additional information about reporting obligations to other agencies is contained in Section 9.

This policy also recognizes other legal obligations related to the *United Nations Convention on the Rights of the Child*, the *Criminal Code*, and the *Child and Youth Advocate Act*.

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

## 5.0 Definitions

- 5.1 **Administrator** – A Principal or Vice Principal of a school.
- 5.2 **Affected Student** – A student who has experienced sexual misconduct or a student identified in a complaint of sexual misconduct.
- 5.3 **Complainant** – An affected student or parent who submits a Sexual Misconduct Complaint Form at Appendix A.
- 5.4 **Complaint form** - The Sexual Misconduct Complaint Form at Appendix A is available to students in the Public Schools Branch and their parent.
- 5.5 **Electronic Means** – Any communication online or using technology, including social media, text messages, and the exchange of messages, images, photographs, etc.
- 5.6 **Employee** – For the purpose of this policy, an employee is any individual working at school premises or at a school-sponsored activity.
- 5.7 **Complaint** – Sharing information about sexual misconduct using the Sexual Misconduct Complaint Form at Appendix A for the purpose of a complaint investigation.
- 5.8 **Grooming** – A process, usually slow, to gain trust and manipulate a child, eventually escalating to conduct of a sexual nature.
- 5.9 **Investigative Team** – Individuals appointed by the Director of Human Resources for the purpose of investigating a complaint of sexual misconduct.
- 5.10 **Parent** – For the purpose of this policy, parent includes a legal guardian, and any person in a custodial role for a student;
- 5.11 **Post-secondary Trainee** – a person attending school premises or school-sponsored activities as part of post-secondary education and training.
- 5.12 **Public Schools Branch-initiated Complaint** – a written complaint of sexual misconduct submitted by an employee using a form adopted by the Public Schools Branch.

5.13 **Respondent** – Any person against whom a complaint of sexual misconduct has been made under this policy.

5.14 **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.<sup>2</sup>

5.15 **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.

5.16 **Sexual assault** – Any sexual contact made by a person against a person without consent and when the person is incapable of consenting. This includes a broad range of behaviours including touching, kissing, or threatened sexual acts.

5.17 **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.

5.18 **Sexual misconduct** – Behavior of a sexual nature that is committed by force, intimidation, coercion or manipulation by an employee, post-secondary trainee, or volunteer and includes:

- Distribution of an intimate image in contravention of the *Intimate Images Protection Act R.S.P.E.I 31988, 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.

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

5.20 **Third-party Complaint** – a complaint using the Sexual Misconduct Complaint Form at Appendix A made by a person other than the affected student such as an employee or Administrator.

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

5.22 **Voyeurism** – Observing or recording a person when they are nude and have a reasonable expectation of privacy for a sexual purpose.

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<sup>2</sup> This policy does not apply to non-Public Schools Branch operations, events or activities that occur on school premises.

## **6.0 Responsibilities**

Everyone in a school or involved in a school-sponsored activity must play a role in preventing and responding to sexual misconduct regarding students. It is understood that Administrators and other leaders in the Public Schools Branch carry a greater responsibility for responding to sexual misconduct.

### Public Schools Branch

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

- ensuring Administrators and employees are informed of the policy and advised of their responsibilities;
- providing leadership in the prevention of sexual misconduct;
- providing opportunities for education and training on sexual misconduct;
- taking disciplinary action after an investigation makes a finding of sexual misconduct.

### 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. These responsibilities include:

- ensuring internal reporting with the Sexual Misconduct Incident Report;
- conducting a screening assessment of complaints, with Administrators;
- appointing members of an Investigative Team;
- providing opportunities for education and training for Investigative Teams on investigating sexual misconduct;
- ensuring that the parties to a complaint are informed of the outcome of an investigation 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. These 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 during an investigation process and connecting students and families to support services;
- reviewing Sexual Misconduct Incident Reports, or another form adopted by the Public Schools Branch;
- overseeing the response protocol when allegations involve student safety concerns;
- working with Administrators and the Investigative Teams to ensure immediate measures to protect students, appropriate documentation; correct notification and referral processes occur (e.g. Child Protection, policy, HR).

### 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 with the Sexual Misconduct Incident Report;
- Accepting complaint forms from Complainants;
- With the Director of Human Resources, conducting a screening assessment of complaints.

#### Investigative Team

The Investigative Team is responsible for:

- conducting a procedurally fair, culturally appropriate, and trauma-informed investigation;
- interviewing and gathering evidence from the Complainant, the Respondent and any witnesses;
- using the least intrusive way to gather necessary evidence from affected students;
- ensuring timely investigations, recognizing that the complexity of issues will influence the length of time required;
- 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 fully with the work of an Investigative Team; and
- cooperating in 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 alternative employees of the Public Schools Branch to carry out responsibilities under this policy.

### **7.0 Consent**

Consent is not a factor when considering sexual misconduct towards students.

In Canada, a person under the age of 16 cannot legally agree to sexual activity, and students aged 16-18 cannot legally consent to any sexual activity with a person in a position of trust, such as a teacher or coach.

### **8.0 Supports Available**

The Public Schools Branch is committed to providing age developmentally and culturally appropriate supports, services, and accommodations to students related to incidents of sexual misconduct. 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);
- Safety planning; and
- Referrals to community services.

The Public Schools Branch recognizes the importance of providing affirming, inclusive and culturally responsive support for students.

The services, supports, and accommodations offered will be based on the student's needs and the circumstances of a complaint.

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

During an investigation, the Investigative Team will ensure that parties to a complaint are informed of their right to have a support person. The Investigative Team will consider any reasonable requests for support, such as reimbursement for required transportation.

If appropriate, the Investigative Team may assign an independent contact within the Public Schools Branch who can provide a Complainant with information about the investigation process.

Additional information regarding the supports available is contained in the Operational Procedures.

## **9.0      Mandatory Reporting to Other Agencies**

An Administrator must contact police if the nature of a complaint is sexual assault, exploitation, stalking, indecent exposure, voyeurism, distribution of an intimate image, or any other offence under the *Criminal Code*.

If a student or other member of the school community is at immediate risk of harm, Public Schools Branch employees must 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 the Operational Procedures.

The Director of the Public Schools Branch, or the Assistant Director, will notify the Minister of Education 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 & Youth Advocate if a complaint is substantiated by an Investigative Team.

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.

## **10.0 Policy Intake**

An affected student or parent has the right to make a complaint of sexual misconduct using the Sexual Misconduct Complaint Form at Appendix A.

The Public Schools Branch will also initiate a complaint process when an employee receives information about sexual misconduct.

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, will be prepared and will serve as a complaint.

Information about the complaint process is at Section 11.

## **11. Complaint Process**

The Public Schools Branch is committed to conducting timely, trauma-informed, culturally appropriate, and procedurally fair investigations of complaints of sexual misconduct. 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 follows about each step in the complaint process.

### *Step 1: Making a Complaint*

The complaint process begins when either a Sexual Misconduct Complaint Form is submitted by a Complainant (an affected student or parent), or when an employee completes a Sexual Misconduct Incident Form, being a Public Schools Branch-initiated complaint.

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*

An Administrator, with assistance from the Director of Human Resources, will review a complaint and conduct a screening assessment. The purpose of complaint screening is to determine whether

the conduct identified in a complaint could be sexual misconduct, based on the definitions in this policy.

It may be necessary to gather additional information during the screening of a complaint.

A complaint screening will determine whether a complaint goes to an investigation.

If a complaint is not screened to go to an investigation, the Complainant will be informed of the decision.

#### *Step 3: Investigation*

As described above, there is mandatory reporting of complaints that could be criminal to the police, and mandatory reporting of information that a child is in need of protection to Child Protection. A complaint investigation by the Public Schools Branch will not interfere with a police investigation or with a Child Protection Services investigation. Additional information about outside investigations can be found in the Operational Procedures.

When a complaint is screened to go to investigation, the Director of Human Resources will inform the Respondent in writing.

The Director of Human Resources will appoint an Investigative Team of 2-3 persons. 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) working days to share information about the investigation process.

The Investigative Team will interview the Complainant, the Respondent, and any witnesses, and gather other relevant evidence such as documents. The Investigative Team will determine how best to gather evidence from any affected students in Public School Branch-initiated complaints or when a parent is the Complainant.

All parties must be given the opportunity to present evidence in relation to the allegations of sexual misconduct.

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

#### *Step 4: 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 any corrective measures based on the circumstances of the complaint.

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. For a Public Schools Branch-initiated complaint, the results will be shared with the Respondent and the affected student and/or parent.

### **12. Interim Measures**

When a complaint of sexual misconduct is received, the Administrator, with assistance from 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.

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 not be inconsistent with an applicable collective agreement, without agreement by the union.

### **13. Internal Incident Reporting**

The Public Schools Branch's electronic incident reporting system will record all incidents, whether under this policy or not. When a complaint is received, the internal incident reporting system will be reviewed to identify any related behaviours or incidents.

### **14. Other Violations**

It is also a violation of this policy for an employee to commit sexual misconduct or engage in sexual activity within two (2) years of a student graduating or no longer being a student.

### **15. Protection Against Reprisal**

No student, witness or employee shall 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 towards a student, witness, or employee is a violation of this policy.

### **16. 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 10.

Students, employees, and any other members of the school community shall keep information about a complaint of sexual misconduct confidential except when disclosure is necessary in order to make a complaint of sexual misconduct under this policy, to cooperate in an investigation, or otherwise as 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.

### **17. Annual Reporting**

In accordance with the *Education Act*, the Public Schools Branch shall include in its annual report information about this policy.

The information contained in an annual report shall not contain individually identifying information of any person.

### **18. Review**

The Public Schools Branch shall review this policy at least once every three years and when directed to do so by the Minister.

### **19. Appendices**

Appendix A - Sexual Misconduct Complaint Form

Appendix B – PSB Sexual Misconduct Incident Report Form

### **20. Cross reference**

Education Act

PSB Operational Policy 505 - Respectful Workplace.

PSB Operational Policy 605 - Safe & Caring Learning Environment

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