

## Alexander Road High School



### SEXUAL HARASSMENT POLICY

#### PURPOSE OF THE POLICY

The purpose of this Sexual Harassment policy is to:

1. confirm the school's commitment to creating an environment that is free of sexual harassment, where all persons, both adults and children, respect one another's integrity, dignity, privacy and right to feel safe and protected from sexual harassment.
2. eliminate sexual harassment at the school.
3. provide appropriate procedures to deal with sexual harassment and prevent its recurrence.

#### DEFINITIONS AND ACRONYMS

1. Parent has the meaning assigned to it in the South African Schools Act.
2. School refers to Alexander Road High School.
3. Alleged perpetrator (also known as the respondent) means a person alleged to have committed an act of sexual harassment and/or a sexual offence.
4. Complainant means a person who lodges a complaint under this policy against whom an act or acts of sexual harassment and/or an act or acts of sexual offences have allegedly been perpetrated.
5. Confidentiality means ensuring that information pertaining to the allegation is accessible only to those authorized to do so.
6. Non-workplace sexual harassment means sexual harassment occurring during work-related functions outside of the normal work environment and/or normal working hours, e.g. Conferences, training sessions, social functions, etc.
7. Same-sex harassment means harassment where the alleged perpetrator and the victim are of the same gender and/or same sex.
8. Sexual act means an act of sexual penetration or an act of sexual violation.
9. Sexual assault means an unlawful and intentional act of sexual contact with another person without that person's consent.
10. Sexual harassment means the unwelcome or unwanted conduct of an implicit or explicit sexual nature by an individual or group. It is conduct that the complainant reasonably experiences as offensive and distressing and which leads to the emotional, physical and social discomfort of the complainant, or interferes with the complainant's work or academic performance, or creates an intimidating, hostile or defensive working, educational or social environment. It may take the form of special victimization, *quid pro quo* harassment or the creation of a hostile environment.
11. Sexual offence includes any offence outlined within the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, including but not limited to, rape, compelled rape, sexual assault, compelled sexual assault, compelled self-sexual assault.
12. Creation of a hostile environment occurs where the purpose or effect is to interfere with another's performance at work or in study.
13. Third parties mean any persons who are neither staff nor students accessing the school, including but not limited to, visitors, clients and/or business contactors.

**Forms of sexual harassment are listed in Appendix D and are deemed to be part of this document.**

#### **AREAS OF APPLICABILITY**

This policy applies to:

1. all activities on any campus of the school.
2. any activity off campus that is deemed to be a school activity by virtue of the fact that it would not occur if it had not been for the school. Examples are sporting and cultural activities off campus as well as meetings of groups called in relation to school events.

#### **PRINCIPLES**

1. The Constitution of South Africa is the supreme law regarding matters of human rights and therefore guides all interpersonal and institutional conduct. Everyone has the right to dignity. Sexual harassment infringes on the dignity of the victim.
2. All acts of sexual harassment are prohibited.
3. The school strives to provide a place of work and study free of sexual harassment, intimidation, or exploitation. It is expected that all persons covered by this policy will treat one another with respect.
4. Reports of sexual harassment will be taken seriously and will be dealt with promptly and in a fair and objective manner. The nature and gravity of each instance will dictate the specific action to be taken, which may include intervention, mediation, investigation and the initiation of grievance or disciplinary processes.
5. The school views false claims as serious misconduct and these will be addressed in accordance with the provisions of the school Code of Conduct.

#### **CONFIDENTIALITY**

1. Grievances about alleged sexual harassment are investigated and handled in a manner that ensures that the identities of the persons involved are kept confidential.
2. In cases of sexual harassment, management, employees and the parties concerned must endeavour to ensure confidentiality during the process. Only appropriate persons, and the aggrieved person, his or her representative, the alleged perpetrator, witnesses and an interpreter, if required, should be present at the disciplinary enquiry.
3. The school is, however, required to disclose to either party or to their representatives such information as may reasonably be necessary to enable the parties to prepare for any proceedings in terms of this policy.

#### **POLICY STATEMENTS**

1. All employees, learners and parents, job applicants and other persons who have dealings with the school have the right to be treated with dignity.
2. Sexual harassment in the school will not be condoned.
3. Persons who claim to have been or are being subjected to sexual harassment in the school have the right to lodge a grievance about it and appropriate action will be taken.
4. Allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially.
5. Employees, Learners and parents will be protected against victimisation and retaliation for lodging grievances and from false accusations.

## **APPLICABLE LEGISLATION, IN BRIEF:**

1. Constitution of the Republic of South Africa (Act 108 of 1996)
2. Employment legislation
3. Legislation protecting children.
4. South African Council of Educators' code of professional ethics

## **APPLICATION AND SCOPE OF THE POLICY**

1. This policy applies to all learners, parents, and staff of the school.
2. Visitors to the school, education department officials, independent contractors, and representatives of organisations and volunteers are expected to refrain from any conduct which may be deemed sexual harassment.
3. While the school can only apply disciplinary measures to learners and staff, the victim of sexual harassment can use his/her legal remedies and the school can deny an alleged harasser any further access to the school premises.
4. A victim of sexual harassment may lodge a grievance with the employer of the harasser where the harassment took place at the school during the harasser's employment.
5. This policy guides the procedures and protocols the school will implement in response to any form of sexual harassment and/or sexual offences, including rape and sexual assault, committed by an employee or learner on or off campus in the context of the school.

## **RESPONSIBILITIES OF THE SGB**

1. The SGB must, after discussion with stakeholders, adopt the Sexual Harassment Policy.
2. The SGB, in conjunction with the school's management, is responsible for monitoring the implementation of the Sexual Harassment Policy and must do so in consultation with relevant stakeholders.
3. The policy will be reviewed when necessary, but at least once every three years.
4. Where necessary, the SGB will assist the principal when action must be taken following breaches of this policy.

## **RESPONSIBILITIES OF THE PRINCIPAL (WITH THE SMT)**

1. The principal is responsible for assisting the school community to understand sexual harassment and what it entails in all its manifestations and complexity.
2. The principal is responsible for implementing the policy and ensuring adherence to it.
3. The principal is responsible for instituting action against any person who acts in contravention of the policy using the appropriate informal or formal response which may include disciplinary and other legal remedies. Where necessary, the SGB's assistance will be required.

## **FORMS OF SEXUAL HARASSMENT**

Sexual harassment may include unwelcome physical, verbal, or non-verbal conduct, but is not limited to the following examples:

- a) Physical conduct of a sexual nature includes all unwanted physical contact, ranging from touching to sexual assault and rape, and includes a strip search.
- b) Verbal forms of sexual harassment include unwelcome innuendoes, suggestions and hints, sexual advances, comments with sexual overtones, sex-related jokes or insults or unwelcome graphic comments about a person's body made in their presence or to them,

unwelcome and inappropriate enquiries about a person's sex life, and unwelcome whistling at a person or group of persons.

- c) Non-verbal forms of sexual harassment include unwelcome gestures, indecent exposure and the unwelcome display of sexually explicit pictures and objects.
- d) Online sexual harassment as well. Not just the showing of sexually explicit pictures, but also creating and distributing online sexually explicit material involving staff/learners. Cutting and pasting someone's face into sexually explicit pictures and videos and distributing that online.
- e) *Quid pro quo* harassment occurs where a member of management or co-employee undertakes or attempts to influence or influences the process of employment, promotion, training, discipline, dismissal, salary increments or other benefits of an employee in exchange for sexual favours.
- f) Sexual favouritism exists where a person who is in a position of authority rewards only those who respond to his or her sexual advances, while other deserving persons who do not submit to sexual advances are denied promotions, merit rating or salary increases, marks, leadership positions, awards, or anything else that constitutes a benefit.
- g) Occasional compliments of a socially acceptable nature do not constitute sexual harassment, and nor do acceptable teaching methods aimed at eliciting debate and discussion.
- h) Mutual attraction between people also does not constitute sexual harassment and should be treated as a private concern.
- i) Appendix D contains more detailed explanation of forms of sexual harassment

## **PROCEDURES**

1. Reporting and first response to sexual harassment
2. A complaint of sexual harassment shall be made on the prescribed form. The form can be submitted by hand or via email to (email address to be inserted). If a complaint is made verbally, then the principal shall assist the complainant to complete the prescribed form and verify the correctness thereof with the complainant.
3. Complaint may be made in person, through a third party or anonymously.
4. All complaints, irrespective of where the incident/s occurred, must be brought to the attention of the principal and deputy principal.
5. Psychosocial support (including counselling) can be arranged by the principal for both the victim/survivor and the alleged perpetrator.
6. Depending on the facts of the complaint, the principal shall decide whether interim measures should be taken and the nature thereof.
7. When an incident of rape has been reported, it is incumbent upon the individual assisting the victim/survivor to promptly inform the individual of the importance of receiving immediate medical attention (including post-exposure prophylaxis (PEP) for HIV, sexually transmitted infections, and emergency contraceptives).
8. A copy of the written complaint will be made available to the alleged perpetrator, who will be given an opportunity to respond in writing.
9. Based on the factors specific to each case, the principal can impose interim measures to be implemented. These include, but are not limited to, no-contact orders, restraining the alleged perpetrator from contacting the complainant until after the investigation and hearing (if any), or any other measure that is reasonable to secure the safety of the complainant or to guard against potential harm to the complainant – any interim measure must be premised on an assessment of

the balance of potential harm to both the complainant and the respondent, and can only endure for 30 working days unless interrupted by the serving of notice of a disciplinary hearing.

#### **RESTORATIVE PROCESS**

1. The complainant must be informed of the options available to deal with the complaint, namely the restorative process and/or the formal disciplinary process.
2. Despite the choice of this process as a mechanism for addressing the complaint, the school maintains its right to deal with the complaint via the formal disciplinary route.
3. Should the complainant opt for the restorative process, the school will inform the respondent in writing. The notice will be accompanied with a copy of the Sexual Harassment policy.
4. The meeting with the alleged perpetrator will be conducted in line with the principles of restorative justice and promoting advocacy against harassment, discrimination, and gender-based violence.
5. When the meeting is constituted, the mechanisms for dealing with the complaints will be outlined as well as defining the different types of sexual harassment, especially in relation to the complaint being dealt with.
6. The written complaint will be read to the alleged perpetrator, including the desired outcome.
7. The alleged perpetrator will be given an opportunity to respond.
8. If the complainant chooses to be present, s/he will be given an opportunity to make any further comments to the alleged perpetrator.
9. The outcome of the restorative process should provide the complainant with a sense of justice and the alleged perpetrator with increased awareness of what sexual harassment constitutes and ideally also a sense of remorse/regret.

#### **DISCIPLINARY HEARING**

1. The deputy principal must conduct a full inquiry and submit an investigation report within 10 working days of the beginning the investigation. If further time is required, reasons for such must be provided.
2. A hearing must be scheduled as soon as possible after the conclusion of the investigation report.
3. At least 10 working days before the scheduled hearing, the investigation report shall be provided to the respondent along with notice of the date and location of the hearing, as well as a list of witnesses.
4. To maintain a relatively non-legalistic process, in the normal course neither the complainant nor the respondent may have legal representation in the form of a practising attorney or advocate. However, if there are substantive and compelling reasons, any party may apply to the Chair within 5 working days of being notified about the hearing to be allowed to bring their own legal representative (at their own expense) to the hearing – such decision is final and should not be the basis of granting any postponement.
5. Unless the complainant opts to appear with the respondent, the complainant and respondent do not appear together in the hearing; rather, the disciplinary proceeding will proceed in a meeting room while the complainant and respondent wait in separate rooms, with the complainant (and his/her witnesses) being called into the meeting room and the discussion being audio-streamed to the respondent; thereafter, the respondent is called into the meeting room.
6. Supporting and contextual material such as photos, cell phone- and social media records can be accepted unless reasonably disputed by either party – the Chair will decide on the admissibility of such evidence. More generally, the Chair decides any question on procedure and any question on the admissibility of evidence, as well as the acceptability/relevance of any witnesses, not being bound by the formal rules of criminal procedure or evidence but rather by the dictates of fairness, justice, and relevance.

7. Following the conclusion of the hearings, the Chair considers, on a balance of evidence, whether the respondent's action constitute misconduct as defined in school's disciplinary rules and policies.
8. In the event of the respondent being found guilty, the deputy principal may also bring to the Chair's attention any previous complaints relating to gender misconduct against the respondent.
9. At this point the Chair may also hear any arguments by the respondent for leniency and/or mitigation, as well as arguments by the complainant in aggravation.

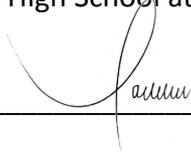
#### **PROHIBITION ON RETALIATORY ACTS**

1. No retaliatory acts may be engaged in against any person who reports an incident of alleged sexual harassment and/or sexual offences, or any person who testifies, assists or participates in any proceeding, investigation or hearing relating to such allegation of sexual harassment and/or sexual offences.
2. Any retaliatory acts, intimidating behaviour and/or secondary harassment by the alleged perpetrator or orchestrated by the alleged perpetrator towards the complainant will be a disciplinary offence.

#### **PROVISIONS FOR EMPLOYEES**

1. In terms of the *Labour Relations Act Code of Good Practice on the Handling of Sexual Harassment Cases* an aggrieved employee may choose to use an informal procedure or a formal procedure. However, the employee should feel under no duress to accept one or the other option.
2. Informal procedure: The employee concerned is given an opportunity to explain to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends them or makes them uncomfortable, and that it interferes with their work.
3. If the informal approach does not resolve the matter satisfactorily, if the case is severe, or if the conduct continues, it may be more appropriate to embark upon a formal procedure.
4. Formal procedure: The disciplinary process in terms of the applicable employee's Code of Conduct will be followed.
  - 4.5 Serious incidents of sexual harassment constitute dismissible offences.
  - 4.6 Continued harassment, after warnings (if applicable) are dismissible offences.
  - 4.7 Allegations of sexual harassment by educators may be reported to the South African Council for Educators.
5. Where an employee's existing sick leave entitlement has been exhausted, the school will consider the granting of additional sick leave in cases of serious sexual harassment if the employee is deemed medically unfit to fulfil his/her duties.
6. Sexual or romantic relationships between employees and learners, even if the relationships are consensual, are prohibited. Any incidence of such relationships will be investigated by the school and appropriate disciplinary action will be taken.
7. Section 3 of the SACE code of professional ethics has the following detail relating to the conduct of educators:
  - 7.5 refrains from any form of sexual harassment (physical or otherwise) of learners;
  - 7.6 refrains from any form of sexual relationship with learners from any school;
  - 7.7 refrains from exposing and/or displaying pornographic material to learners and or keeping same in his/her possession;

This Sexual Harassment Policy for Alexander Road High School was adopted by the Governing Body of Alexander Road High School at a meeting held at the school on 17 June 2021.

SIGNED:  \_\_\_\_\_

**CHAIRPERSON OF THE GOVERNING BODY**

DATE: 17 June 2021

SIGNED: \_\_\_\_\_ 

**SECRETARY OF THE GOVERNING BODY**

DATE: 17 June 2021

SIGNED: \_\_\_\_\_  \_\_\_\_\_

**PRINCIPAL**

DATE: 17 June 2021

**Appendix A**

**POLICY REGISTER DETAILS**

TITLE OF POLICY	Alexander Road High School Sexual Harassment Policy
POLICY NUMBER	
DATE APPROVED BY SGB	
EFFECTIVE DATE	
EXPIRY DATE	This School Sexual Harassment Policy remains in force until amended or replaced <u>and</u> approved by the SGB.
REVIEW DATE	(The SGB will review this policy at least once during its term of office.)
AMENDMENT HISTORY	

Updated June 2021

**Appendix B**

**Non-disclosure agreement for investigating officer.**

Alexander Road High school



<b>SEXUAL HARASSMENT NON-DISCLOSURE AGREEMENT</b>			
<b>Name of complainant</b>			
<b>Name of investigating officer</b>			
<b>Date of incident</b>			
<b>Name of the alleged offender</b>			
<b>NON-DISCLOSURE STATEMENT</b>			
I undertake to keep the information provided to me for the purposes of this investigation completely confidential.			
The purpose of this confidentiality is to protect the victim and in the case of false claims, the alleged offender.			
<b>Signature of official</b>		<b>Date</b>	
<b>Incident reference number</b>			

**A copy of this form should be completed and signed by the investigating officer and any other official that is part of the administration of this process.**

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<b>SEXUAL HARASSMENT COMPLAINT FORM</b>			
<b>Name of complainant</b>			
<b>If a learner aged under 18, name of learner's adult representative</b> (this could be a parent, staff member or any adult of the learner's choice)			
<b>Date of incident</b>			
<b>Date of submission of this complaint</b>			
<b>Name of the alleged offender</b>			
<b>COMPLAINT DETAILS</b>			
Describe the incident or practice and explain why you considered it to be sexual harassment. What? Why? Who? When? Where? Witnesses? Describe how the incident made you feel.			
<b>OUTCOME WANTED</b>			
As a guide for the person/s following up your complaint, please specify what you want the outcome of this complaint to be. What action do you suggest that the school should take should your complaint be upheld as a case of sexual harassment? The school is not bound to adhere to these wishes.			
<b>Signature of complainant</b>		<b>Date</b>	
<b>Signature of representative</b>		<b>Date</b>	
<b>Signature of receipt of complaint by school official</b>		<b>Date</b>	
<b>Incident reference number</b>			

A copy of this form signed by the school official should be given to the complainant.

## Appendix D

### FORMS OF SEXUAL HARASSMENT

1. Compelled rape occurs when a person unlawfully and intentionally compels a third person, without the consent of the third person, to commit an act of sexual penetration with a complainant, without the consent of the complainant.
  2. Compelled sexual assault occurs when a person unlawfully and intentionally compels a third person, without the consent of the third person, to commit an act of sexual violation with a complainant, without the consent of the complainant.
  3. Compelled self-sexual assault occurs when a person unlawfully and intentionally compels a complainant, without the consent of the complainant, to –  
engage in –
    - a) masturbation.
    - b) any form of arousal or stimulation of a sexual nature of the female breasts; or sexually suggestive or lewd acts, with B himself or herself.
    - c) engage in any act which has or may have the effect of sexually arousing or sexually degrading the complainant; or
    - d) cause the complainant to penetrate in any manner whatsoever his or her own genital organs or anus, is guilty of the offence of compelled self-sexual assault
1. Grooming involves an action or series of actions, which can initially appear to be conducted within the context of the school community but are taken with the overall aim of befriending and establishing a psychological and/or material connection with a person in order to facilitate subsequent sexual harassment or sexual offences and/or to hinder the reporting of various acts of harassment or assault. This includes ‘online grooming,’ which refers to grooming by means of modern-day technology, such as mobile phones and the internet.
  2. Rape means an unlawful and intentional act of sexual penetration with another person without that person’s consent, specifically including:
    - a. the use of force or intimidation by the alleged perpetrator against the complainant, another person, or the property of these persons;
    - b. a threat of harm, real or perceived, by the alleged perpetrator against the complainant, another person, or the property of these persons;
    - c. an abuse of power or authority such that the complainant is inhibited from expressing her/his resistance or unwillingness to participate in the act;
    - d. false pretences or by fraudulent means;
    - e. the inability of the complainant to understand the nature of the act of sexual penetration, including where the complainant is at the time thereof:
      - i. asleep or unconscious;
      - ii. in an altered state of consciousness, including, but not limited to, under the influence of any medicine, drug, alcohol, or other substance, to the extent that her/his ability to consent is adversely affected;
      - iii. mentally disabled;
      - iv. a child below the age of 12 years.

3. Pornography and child pornography means any image, however created, or any description of a person, real or simulated, of an explicit or sexual nature that is intended to stimulate erotic feelings, including any such image or description of such person:
  - 1.9 engaged in an act that constitutes a sexual offence;
  - 1.10 engaged in an act of sexual penetration;
  - 1.11 engaged in an act of sexual violation;
  - 1.12 engaged in an act of self-masturbation;
  - 1.13 displaying the genital organs of such person in a state of arousal or stimulation;
  - 1.14 unduly displaying the genital organs or anus of such person;
  - 1.15 displaying any form of stimulation of a sexual nature of the female breasts;
  - 1.16 engaged in sexually suggestive or lewd acts;
  - 1.17 engaged in or as the subject of sadistic or masochistic acts of a sexual nature;
  - 1.18 engaged in any conduct or activity characteristically associated with sexual intercourse; or
  - 1.19 showing or describing the body, or parts of the body, of that person in a manner or in circumstances which, within the context, violate or offend the sexual integrity or dignity of that person or any other person or is capable of being used for the purposes of violating or offending the sexual integrity or dignity of that person or any other person.
4. Sexual penetration (or sexually penetrate) includes any act which causes penetration to any extent whatsoever by-
  - a. the genital organs of one person into or beyond the genital organs, anus, or mouth of another person;
  - b. if an animal, into or beyond the genital organs or anus of another person; or
  - c. the genital organs of an animal, into or beyond the mouth of another person
5. Sexual violation includes any act which causes direct or indirect contact between the –
  - a. genital organs or anus of one person or, in the case of a female, her breasts, and any part of the body of another person or an animal, or any object, including any object resembling or representing the genital organs or anus of a person or an animal;
  - b. mouth of one person and –
    - i. the genital organs or anus of another person or, in the case of a female, her breasts;
    - ii. the mouth of another person;
    - iii. any other part of the body of another person, other than the genital organs or anus of that person or, in the case of a female, her breasts, which could –
      1. be used in an act of sexual penetration;
      2. cause sexual arousal or stimulation; or
      3. be sexually aroused or stimulated thereby; or
    - iv. any object resembling the genital organs or anus of a person, and in the case of a female, her breasts, or an animal; or
    - v. mouth of the complainant and the genital organs or anus of an animal;
      1. the masturbation of one person by another person; or
      2. the insertion of any object resembling or representing the genital organs of a person or animal, into or beyond the mouth of another person, but does not include an act of sexual penetration.

6. Unwelcome sexual conduct includes physical, verbal, and non-verbal conduct of a sexual nature that is perceived by the complainant as demeaning, compromising, embarrassing, threatening and/or offensive. Such conduct may be direct or indirect and may include technological devices, images, and weapons. A single incident of unwelcome sexual conduct can constitute sexual harassment.
7. Unwelcome physical conduct ranges from touching to sexual assault and rape.
8. Unwelcome verbal conduct includes innuendos, suggestions or hints of a sexual nature, sexual advances, sexual threats, comments with sexual overtones, sex-related jokes or insults, graphic comments about a person's physique, inappropriate enquiries about the person's sex life, wolf-whistles, and sending sexually explicit text/graphics via electronic means or otherwise.
9. Unwelcome non-verbal conduct includes gestures, indecent exposure and the display or sending of sexually explicit pictures or objects via electronic or other means.