



Coimisiún na hÉireann
um Chearta an Duine
agus Comhionannas
Irish Human Rights and
Equality Commission

YOUR RIGHTS INFORMATION NOTE

HARASSMENT AND SEXUAL HARASSMENT IN SCHOOLS AND UNIVERSITIES

ABOUT “YOUR RIGHTS”

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RELEVANT LEGISLATION

THE EQUAL STATUS ACTS 2000 -2018 (“ESA”)

Where a person believes they have been the subject of harassment or sexual harassment in an educational establishment such as a school or university, the applicable legislative framework is the Equal Status Acts 2000-2018 (“the ESA”)

<https://www.ihrec.ie/documents/a-guide-to-the-equal-status-acts/>

The ESA prohibits harassment or sexual harassment in an “educational establishment”.

COMMON TERMINOLOGY

WHAT IS A “COMPLAINANT”?

In the context of harassment and sexual harassment under the ESA, a complainant is a person who claims they were harassed and who proceeds to take a claim against the person or organisation such as the educational establishment they claim was responsible for the harassment. A parent/guardian can bring a complaint on behalf of their child, where the child is a minor.

WHAT IS A “RESPONDENT?”

In the context of the ESA, a respondent will be a person or organisation or company that an individual claims is guilty of harassing or sexually harassing them or is responsible for others having done so. The respondent would be the educational establishment in which it is alleged the harassment or sexual harassment took place. Depending on the organisational set up of the educational establishment it could be the name of the university, the name of the school or the Board of Management of the school that could be named as the respondent. A respondent will be required to respond or defend a claim brought by a complainant. For more information on identifying the correct respondent to bring a claim against, please see IHREC’s

Guide entitled, *The Process for Instituting a Case at the Workplace Relations Commission under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018*
[How you bring a case to the Workplace Relations Commission under the Employment Equality Acts and the Equal Status Acts.](#)

WHAT IS “VICARIOUS LIABILITY”?

In some instances, an educational establishment can be held legally responsible, “vicariously liable”, for a wrongful act, even where they themselves did not carry out the wrongful act. For example an educational establishment can be held to be vicariously liable for harassment and/or sexual harassment, that is perpetrated by:

- an employee of the educational establishment, such as a teacher, lecturer or another member of staff;
- someone who is not an employee but who is contracted by and/or who works in some capacity for the educational establishment; or
- a person whom it could reasonably be assumed a complainant would come in contact with such as another student at the educational establishment.

WHAT IS “EVIDENCE”?

Evidence may be introduced by a complainant or respondent at the hearing of a dispute at the Workplace Relations Committee (“the WRC”). Evidence may be, for example, in the form of documents, CCTV footage, text messages or emails, or it may be provided in oral testimony, by a person who witnessed events or who knew about them, commonly referred to as a “witness”.

Complainants should take a contemporaneous note of incidents as soon as it is possible afterwards, they should also include the date the note was taken on the document and the

names of any witnesses. Where possible, complainants should also keep print outs and/or photographs of relevant information or interactions with the person that has subjected them to harassment or sexual harassment.

WHAT IS AN “ADJUDICATION OFFICER”?

An Adjudication Officer is a person appointed by the WRC to investigate disputes and decide on claims that individuals make under the ESA. They chair the hearing of disputes, investigate the dispute and then come to a decision in relation to whether a complainant’s case has a basis or not.

An Adjudication Officer carries out a similar role to a judge in a normal court case, but they are likely to act in a less formal manner, and they should be addressed as “Chair” or “Adjudication Officer”.

HARASSMENT OR SEXUAL HARASSMENT IN AN EDUCATIONAL ESTABLISHMENT

WHAT IS AN “EDUCATIONAL ESTABLISHMENT”?

Section 7 of the ESA provides the definition of “educational establishment” and it includes pre-schools, primary schools, post-primary schools, universities or institutions providing third level or higher level education and institutions providing adult continuing and further education.

WHAT IF A PERSON IS NOT YET A STUDENT OF THE EDUCATIONAL ESTABLISHMENT?

The prohibition of harassment or sexual harassment at an educational establishment under section 7 of the ESA includes both students and prospective students. A parent/guardian can bring a complaint on behalf of their child, where the child is a minor.

ARE THERE DIFFERENT TYPES OF HARASSMENT?

In the ESA, harassment is separated into two categories:

- harassment; and
- sexual harassment.

WHAT IS “HARASSMENT”?

Harassment is defined as having the following three characteristics:

- it must be in the form of conduct which is unwanted by the person that is subjected to it;
- it must relate to one of the nine discriminatory grounds (please see the section entitled “Discrimination” above); and
- the conduct must be for the purpose or have the effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

The unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material. Harassment can occur in person or in other forums such as online.

There are a few things to note in relation to this definition.

The conduct in question must be unwanted. A complainant, the person making the complaint, will know themselves whether they wanted to be subjected to the conduct or not. However, assessing whether conduct was wanted or unwanted will fall to the Adjudication Officer to examine and reach a conclusion on, after hearing evidence.

The conduct can either be for the purpose of or have the effect of violating the dignity of the person who is subjected to it, it can be one or the other. This means, while a person's dignity may not actually be violated as a result of the conduct, it will be sufficient to show that the purpose of the conduct was to violate the person's dignity.

However, it is still necessary to show the following three requirements are fulfilled:

1. the conduct was unwanted by the person that was subjected to it;

and

2. it was for the purpose of or have the effect of violating a person's dignity;

and

3. it was to create an intimidating, hostile, degrading, humiliating or offensive environment for the person concerned.

WHAT IS "SEXUAL HARASSMENT"?

Sexual harassment has similar characteristics, which are:

- it must be in the form of conduct which is unwanted by the person that is subjected to it;

- the conduct must be of a sexual nature;
- the conduct may be verbal, non-verbal or physical in nature; and
- the conduct must be for the purpose of or have the effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

The unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material. Sexual harassment can occur in person or in other forums such as online.

It is not necessary to show that the sexual harassment is related to one of the nine discriminatory grounds.

There are a few things to note in relation to this definition.

It is not necessarily the case that a person be subjected to physical touching in order for another person's conduct to constitute sexual harassment. Using sexual language or making a sexual gesture towards someone may qualify as sexual harassment.

The conduct can either be for the purpose of, or have the effect of, violating the dignity of the person who is subjected to it – i.e. it can be one or the other. Therefore, while a person's dignity may not actually be violated as a result of the conduct, it will be sufficient to show that the purpose of the conduct was to violate the person's dignity – this may be shown by what the perpetrator's motivation is, for example, through the words they used.

The conduct in question must be unwanted. A complainant, the person making the complaint, will know themselves whether they wanted to be subjected to the conduct or not. However, assessing whether conduct was wanted or unwanted will fall to the Adjudicator to examine and reach a conclusion on, after hearing evidence.

However, it is still necessary to show the following three requirements are fulfilled:

1. the conduct was unwanted by the person that was subjected to it;

and

1. it was for the purpose of or have the effect of violating a person's dignity;

and

2. it was to create an intimidating, hostile, degrading, humiliating or offensive environment for the person concerned.

WHAT TYPES OF ACTS MAY CONSTITUTE SEXUAL HARASSMENT?

The ESA does not set down a narrow or rigid definition of what type of conduct may constitute sexual harassment, provided it is verbal, non-verbal or physical in nature.

However, it does provide examples of the type of conduct that may constitute sexual harassment, all of which must be sexual nature and include:

- acts;
- requests made to a person;
- spoken words;
- gestures; or
- production, display or circulation of written words, pictures or other types of material.

This is only a sample list of the type of conduct that may be sexual harassment and it may be that a person is subjected to other types of conduct that do not fit into the categories set out above, but which do constitute sexual harassment.

WHY IS DISCRIMINATION RELEVANT TO HARASSMENT?

In order for conduct to constitute harassment (as opposed to sexual harassment) it must be related to one of the discriminatory grounds set out in the ESA.

It is not necessary to show that the harassment is related to one of the nine discriminatory grounds if it is sexual in nature.

In some cases, conduct can amount to both harassment and sexual harassment, and complaints may be lodged in respect of both categories of prohibited conduct. If a complainant is not sure which category the conduct falls into, they may wish to consider making two separate complaints, one for harassment and the other for sexual harassment. If a complainant wishes to make a complaint in respect of both harassment and sexual harassment this can be done on the same complaint form.

WHAT IS THE DIFFERENCE BETWEEN “HARASSMENT” AND “BULLYING”?

In order for conduct to constitute harassment it must be related to one of the discriminatory grounds set out in the ESA. The WRC and the courts have made clear that harassment and/or sexual harassment may occur as a single event. It is not necessary to demonstrate that there have been repeated acts in order for certain conduct to constitute harassment.

Bullying concerns “inappropriate behaviour” for any reason and does not have to be related to one of the discriminatory grounds. Bullying can only arise where the inappropriate behaviour is repeated but harassment can occur on the basis of a one off event. Therefore if the inappropriate behaviour does not relate to the nine discriminatory grounds it would not

be considered to be “harassment”. It is necessary for the conduct to meet the criteria as outlined about to be considered as “harassment” or “sexual harassment” under the ESA.

WHAT ARE THE NINE DISCRIMINATORY GROUNDS?

In order for a person to prove they have been the subject of harassment (as opposed to sexual harassment) they must show that the harassment related to one of the grounds of discrimination under section 3(2) of the ESA. The nine grounds of discrimination are:

Gender (male, female, transgender, pregnancy, or maternity leave)

Where a complainant is one gender (male or female) and another person is another gender (male or female). It is also possible that a complainant may be harassed because they are or were pregnant, or because they are due to go on or have been on maternity leave.

Civil status (single, married, separated, divorced, widowed or in a civil partnership)

Where a complainant has a different civil status to another person, for example, where a person is divorced while another person is married.

Family status (a pregnant person, parent or acting parent of a child, a parent or a carer of a person with a disability who requires continued care)

Where a complainant has a different family status as compared to another person, for example, where one is pregnant and someone else is not.

Sexual orientation (heterosexual, homosexual or bisexual orientation)

Where a person is treated less favourably because they have a different sexual orientation to another person, for example where a complainant is gay while the other person is heterosexual (straight).

Age (only applies to those who are aged eighteen years and over)

Where a complainant is a particular age and another person is older or younger than they are.

Religious belief (including religious background and those who have no belief)

Where a person is one religion, for example, Jewish, while the other is a different religion, such as being a Roman Catholic or has no religious belief.

Membership of the Traveller community

Where a person is a member of the Traveller community and another person is not.

Race (colour, nationality, ethnic or national origin)

Where a person is a particular colour, nationality, ethnicity or national origin compared to another person who is a different colour, nationality, ethnicity or national origin.

Disability (intellectual, mental and/or physical disability)

Where a person has a disability and another person does not.

WHEN CAN HARASSMENT RELATING TO THE DISCRIMINATORY GROUNDS ARISE?

Where a ground exists at the time of making the complaint

Where a person is being subjected to harassment on the basis of one of the nine grounds at the time of making the complaint.

Where a ground used to exist but no longer exists

Harassment can also arise where a discriminatory ground used to exist but no longer does, for example, where a person has returned from maternity leave and they are still being harassed as a result of the fact they had been on maternity leave.

Where a ground may exist in the future

Harassment can also arise where the discriminatory ground has not yet come into being, but where it may do in the future. An example of this may involve a person being harassed on account of the fact that they are not yet pregnant, but may be in the future.

Where a ground is assumed to exist by the perpetrator but actually does not exist

Even if a perpetrator wrongly believes a victim to be part of a protected group and subjects them to prohibited conduct on the basis of their mistaken belief, this may still constitute

harassment. An example may be where a person is assumed to be Muslim but where they are in fact not.

Where harassment occurs as a result of association

Harassment can occur where a person is subjected to prohibited conduct because of their connection, relationship or association with another person who falls within the protected grounds.

It is not necessary to demonstrate that any form of sexual harassment was associated with any of the nine grounds.

Does a perpetrator have to be a different sex or gender as compared to a victim in order for conduct to constitute harassment or sexual harassment?

It is no longer the case that a person being subjected to certain conduct must be of a different sex or gender from the person who is responsible for the conduct in order for it to constitute harassment or sexual harassment. For example, it is possible for a man to subject another man to sexual harassment, and it is possible for a woman to subject another woman to sexual harassment.

Is the perpetrator's intention relevant in assessing whether conduct constitutes harassment or sexual harassment?

The definitions outlined above (for more information, see the sections entitled "*What is Harassment?*" and "*What is Sexual Harassment?*" above) demonstrate that in order to constitute harassment or sexual harassment, conduct may be for the purpose of violating a

person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

However, where a victim can show that the conduct had the effect of violating their personal dignity, regardless of the intention of the perpetrator, the Adjudicator may also decide this is harassment or sexual harassment. This assessment is carried out from the Complainant's point of view.

Is it necessary for a person to say explicitly that they do not want to be subjected to certain conduct for it to constitute harassment or sexual harassment?

No. In order to determine whether conduct amounts to harassment or sexual harassment the key issue is whether the conduct was unwanted.

A person may communicate to a perpetrator of harassment and/or sexual harassment that they do not wish to be subjected to certain conduct, and this may result in it being very clear that the conduct is not wanted. However, it is not necessary to do so. There will often be circumstances where a person feels too intimidated to express the fact that they do not want to be subjected to the conduct.

Does a complainant have to show that they have been treated differently in comparison to a "comparator"?

For some other types of complaints of discrimination under the ESA, it is necessary to identify "a comparator". That means that it is necessary to demonstrate that there has been less favourable treatment as between two persons, where the complainant falls under one of the above protected grounds, and the other (the comparator) does not but is in a similar situation.

Harassment and sexual harassment are distinct forms of discrimination as compared to other categories. It is not necessary for a victim to present a comparator in the same way that they might have to do for other forms of discrimination. It is sufficient to demonstrate that certain criteria, detailed in the section entitled “Definition of Harassment and Sexual Harassment”, have been satisfied (for more information in relation to “comparators”, please see IHREC’s standalone guide entitled *“The Process for Instituting a Case at the Workplace Relations Commission Under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018”*).

What is the obligation on the educational establishment?

A person who is responsible for the operation of a place that is an educational establishment shall not permit another person that has a right to be present in that place or to avail of the services provide at that place, to suffer sexual harassment or harassment at that place.

A person who is responsible for the operation of an educational establishment should take steps that are reasonably practicable to prevent the harassment.

What defence might an educational establishment raise against a complaint of harassment or sexual harassment?

It shall be a defence for the responsible person of the educational establishment to prove that they took such steps as are reasonable practicable to prevent the harassment or sexual harassment.

The existence of a policy in relation to harassment, which has been effectively communicated to all individuals present can provide a defence for the person who is responsible for the operation of an educational establishment, even where a perpetrator has been found guilty of the harassment.

However, if the person who is responsible for the operation of an educational establishment did not take reasonably practicable steps to prevent the harassment (e.g. the absence of a policy regarding harassment) it will make it difficult, if not impossible for the person who is responsible for the operation of an educational establishment to avoid liability for the harassment.

What if i am an employee of an educational establishment such as a school or university?

Where a person who is an employee of an educational establishment such as a school or university and believes that they have been the subject of harassment or sexual harassment during the course of their employment at the school or university, the Employment Equality Acts 1998-2015 (“the EEA”) <https://www.ihrec.ie/documents/a-guide-to-the-equal-status-acts/> are also relevant.

Please see IHREC’s standalone guide entitled *“The Process for Instituting a Case at the Workplace Relations Commission Under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018”*. [How you bring a case to the Workplace Relations Commission under the Employment Equality Acts and the Equal Status Acts.](#)

Please also see IHREC *“Your Rights Information Note – Sexual Harassment and Harassment in the Workplace.*

<https://www.ihrec.ie/guides-and-tools/human-rights-and-equality-for-employers/what-does-the-law-say/sexual-harassment-and-harassment-in-the-workplace/#:~:text=The%20Employment%20Equality%20Acts%201998%2D2015%20define%20harassment%20as%20unwanted,conduct%20of%20a%20sexual%20nature.>

THE FORUMS FOR COMPLAINTS

THE ESA

Where can a complaint under the ESA be instituted?

[The Workplace Relations Commission](#) (“WRC”) was established by legislation, [the Workplace Relations Act 2015](#) (for more information, please see IHREC’s standalone guide entitled “*The Process for Instituting a Case at the Workplace Relations Commission Under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018*”) [How you bring a case to the Workplace Relations Commission under the Employment Equality Acts and the Equal Status Acts.](#)

All claims under the ESA, including complaints for harassment and sexual harassment in an educational establishment, may be instituted at the WRC. It is also possible to bring a case to the Circuit Court instead of the WRC, where the harassment and/or sexual harassment occurs as a result of a person’s gender. In considering whether to bring a case relating to the gender ground to the Circuit Court or to the WRC there are a number of factors to be taken into account. For example the Circuit Court can make an order for an unsuccessful party to pay the legal costs of the successful party but the WRC cannot make such a costs order. The Circuit Court does not have the same limit on the award of compensation that can be made to a successful party whereas the WRC has a maximum amount of €15000 that can be awarded. The procedures at the WRC are considered to be less formal in comparison to the Circuit Court. For more information, please see IHREC’s Guide entitled, *The Process for Instituting a Case at the Workplace Relations Commission under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018*].[How you bring a case to the Workplace Relations Commission under the Employment Equality Acts and the Equal Status Acts.](#) There are no other circumstances where a case can start in the Circuit Court when it relates to conduct prohibited by the ESA.

Where do hearings at the WRC take place?

Hearings at the WRC usually take place at Landsdowne House, Landsdowne Road, Dublin 4, but they can also take place at various locations across the country to facilitate participants who live outside or far from Dublin.

When a complaint is made and a hearing date is provided, the WRC will take into account the location of the Parties, for example, if a person's claim relates to an educational establishment in Kilkenny, there is a possibility the case may be heard in Kilkenny or the South East.

The WRC procedure is designed to be as informal as possible. Parties do not necessarily need to engage legal representation, although many choose to do so.

Hearings and mediations at the WRC take place in boardrooms, with parties and adjudicators/mediators seated around conference tables. Unlike a courtroom, it is usual for those involved in these hearings and mediations to remain seated. Special arrangements can be made for persons with disabilities.

What is the time limit to bring a complaint to the WRC?

If a person wishes to make a complaint of harassment or sexual harassment against an educational establishment to the WRC, they must first notify the person/ the establishment against whom the complaint is made, in writing, within **two months** of the date of the most recent occurrence of the harassment or sexual harassment and set out the details of the nature of the allegation and the intention to seek redress if a satisfactory response is not received. If there is no reply within **one month** or if the reply is unsatisfactory, the complaint

form should be lodged with the WRC within **six months** of the harassment or sexual harassment. Copies of all correspondence and proof of posting should be kept.

The written notification can be done by acquiring and filling out the complaint form, **Form ES1** (accompanied by **Form ES2** for a reply). These forms are available on the website of the Workplace Relations Commission (www.workplacerelations.ie) under “Make a complaint in relation to equal status”. For more information, please see IHREC’s Guide entitled, *The Process for Instituting a Case at the Workplace Relations Commission under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018* [How you bring a case to the Workplace Relations Commission under the Employment Equality Acts and the Equal Status Acts.](#)

Does the hearing of a complaint take place in public?

Most cases that are instituted and heard in the WRC are now heard in public. This was not previously the case, with the rules having changed in April 2021. This means that any member of the public, including journalists, may attend and listen to what happens in the case and when a decision is published, it will include the name of the complainant(s) and the respondent(s). There is a limited exception to this general rule – section 41 of the Workplace Relations Commission Act 2015 (which was amended by [section 4 of the Workplace Relations \(Miscellaneous Provisions\) Act 2021](#)) provides that where “special circumstances” exist, an adjudication officer has the power to direct that a hearing (or part of it) should not take place in public. This may include anonymising the names of a complainant or respondent. What constitutes “special circumstances” will depend on the facts of each case, but such circumstances may include:

- where a case involves a child;
- where a person involved in the complaint has a disability or medical condition, which they do not wish to be revealed;

- cases involving issues of a sensitive nature such as sexual harassment;
- cases involving a protected disclosure; or
- cases which would result in a real risk of harm to a party if the hearing is held in public or if the parties are named in the decision.

Where a complainant wishes for a hearing or part of it to be closed and/or does not want to be identified, they can write to the WRC to indicate this, but usually the decision will be made by an adjudication officer on the day of the hearing. If an adjudication officer decides to hold the hearing in public or refuses to anonymise their decision, it is always open to a complainant to withdraw their complaint before proceeding any further, in order to avoid anything of substance about them or their complaint being revealed.

If a potential complainant opts to institute their case in the Circuit Court, it will likely be heard in public and if the Judge publishes a written decision, this will also usually be publicly available.

Deciding when to make a complaint at the workplace relations commission or the circuit court

Does a perpetrator's conduct have to continue over a sustained period in order to constitute harassment or sexual harassment?

The WRC and the courts have made clear that harassment and/or sexual harassment may occur as a single event. It is not necessary to demonstrate that there have been repeated acts in order for certain conduct to constitute harassment.

What if discrimination is ongoing, how should the time period for instituting a complaint be determined?

A complaint must be filed at the WRC within six months of the last date of harassment and/or sexual harassment.

In many cases, where just one act of harassment and/or sexual harassment occurred as it is a standalone event, it will be easy to determine when the six-month time period (for more information, please see the IHREC's standalone guide entitled "*The Process for Instituting a Case at the Workplace Relations Commission Under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018*").

However, there will also be situations where harassment or sexual harassment occurs and is then repeated over a lengthy period. The question here is when the six-month time limit to refer a complaint begins and ends?

Even where a complainant believes there is continuing harassment and/or sexual harassment, it is important to institute a complaint as soon as possible, to avoid the risk of missing the six-month period to lodge the complaint.

In some cases, it will be obvious that there is continued harassment or sexual harassment and it may be the case that it is still occurring when the complaint is made (this is sometimes called a "continuing breach" of the law). In such a situation, the six-month time period will not have started to run and a complainant may make the complaint to the WRC at any time, so long as the harassment and/or sexual harassment continues.

Alternatively, it may be that sustained harassment and/or sexual harassment occurred over a period of time, but it stopped some time ago. In such a situation the time period under the ESA will run from the last event of harassment and/or sexual harassment.

Some situations are not so clear-cut and there will be occasions where significant gaps occur between events of harassment and/or sexual harassment and it is therefore more difficult to determine whether there is a “continuing breach”. In these cases, there may be a series of separate events, which result in harassment and/or sexual harassment.

In such circumstances, one or more events of harassment and/or sexual harassment may be outside the six-month time limit. But where the acts are sufficiently connected to discrimination that did fall within the time limit, it may be possible to consider them as part of a single line of events known as a “continuum”.

It is important to be cautious and make your complaint as early as possible. Different people may have different ideas about whether there has been a continuing breach.

Case Studies

Case Study1: [A Complainant \(Complaint taken by the father and next friend\) v A Secondary School DEC-S2009-074](#)

A complaint was brought against a secondary school by a father on behalf of his son who was a student at the school. The complaint related to unlawful discrimination and harassment on the gender ground in respect of the secondary school's uniform requirement that prohibit boys from wearing an earring and it was argued that subsequent incidents of enforcement of the rules amounted to harassment and ten examples were given to the Equality Officer. The complainant was not successful with his claim in respect of discrimination or harassment and the Equality Officer was not satisfied that there was evidence of harassment on the gender ground and concluded as follows.

“5.11. I have been presented with no evidence to support an argument of harassment within the meaning of the Acts on the gender ground. As the complainant himself failed to give evidence on the matter, it is not clear how requests to remove his earring

or the school's expectation that he comply with school rules and disciplinary proceedings can be construed as creating an intimidating, hostile or degrading environment on the gender ground. I note that a girl wearing a single earring or, for example, large earrings would have been treated in the same manner. I accept the evidence of a named vice-principal who stated that she regularly has young women remove their make-up in her office. I note that the next friend argued that his son regularly observed others who violated school rules and got away with it. His wife also stated that she has regularly observed girls with heavily applied make up entering the school yard. I accept that this is the case. I find that in an educational establishment of this size - with an ambition to educate rather than to discipline - some students will rebelliously try to undermine these rules and some violations of the dress code will go unnoticed. I am not satisfied that such an omission can be construed as harassment on the gender ground. I have not been presented with any evidence to suggest that only female students attending the respondent school are able to undermine the dress code."

Case Study 2: [A Student v An Educational Establishment DEC-S2009-084](#)

A complaint was brought by a student against an educational establishment alleging that he was discriminated against on the ground of sexual orientation and the subject of victimisation. He also claimed that he was subject to harassment on the ground of his sexual orientation contrary to the ESA. He claimed that he was treated less favourably because he was gay by the tutors and staff of the educational establishment of further education. The complainant referred to a number of incidents where he claimed he was targeted and harassed because of his sexual orientation.

For example the student complained that on one occasion when he was visiting the administration where he was looking for a particular magazine from the respondent's manager, Mr. B, one of the teaching staff, Ms. A, made a comment that he could use one of the girls magazines because he was only "a little woman". The student claimed that that there were a number of people in the vicinity who heard her comments, including Mr. B, and they

all laughed. He claimed that he later reported the incident to Mr. B and nothing was done about it.

The complainant referred to an incident in the classroom one lunchtime where a row escalated with a fellow student who called him "a f***** queer" and that "he would break [his] face". He claims he reported the incident to the manager, Mr. B, who brought both students into his office in an effort to sort out the problem. The student claimed that he apologised for his part in the trouble, whereas his adversary refused to apologise and no action or sanction was taken against him.

The respondent refuted the claim that it discriminated against him because of his sexual orientation and refuted the claim that he was victimised or harassed during his time at the college. The respondent presented Ms. A as a witness, who claimed that it was obvious that the complainant was gay. She claimed that he openly made reference to that fact on a number of occasions and she claimed that the student would get involved with and, in ways, invite friendly banter on that topic. In particular the witness referred to an occasion on a college trip, when she claims the student said, in front of all the other students, "that he is half woman". Ms. A gave evidence that she was aware of other students on her programme that were homosexual and this was never an issue. She claimed that the college prided itself on its diverse environment. Mr. B, the manager, also offered similar evidence in relation to the environment and culture in the college and also of the fact that he knew that the student was gay and that was not an issue for the college staff or students. The respondent also presented a fellow student of the complainant, who also gave evidence to suggest that the complainant had often referred to the fact that he was gay. He also stated that he was aware of other gay students in the college and there were no problems in that, he claimed everyone was treated equally irrespective of their sexual orientation.

Mr. B claimed that he investigated the incidents that were brought to his attention and dealt with them on an ongoing basis and he said that he did this in line with college policy, as set out in a document entitled Safety Statement. He claimed that he held a class meeting with the complainant's classmates in an attempt to reinforce the college's policies of respect and tolerance in an effort to promote a safe environment for all students. He claimed that

following an investigation of any complaint sanctions were taken when management deemed them appropriate. Evidence was presented of a sanction taken against a named student for such an incident. The respondent claimed it tried to accommodate the complainant in every way possible. The respondent presented its Safety Statement which included information on its disciplinary procedures, code of practice for all stakeholders involved with the college and the policy/procedures on the prevention of, and dealing with Bullying/Harassment.

The Equality Officer considered all of the evidence and when deciding on the issue of harassment he noted that the respondent's manager had admitted that he was present when the complainant was subjected to a verbal attack by another student which included remarks in relation to his sexual orientation. The Equality Officer was satisfied that raised an inference of harassment under section 11 of the ESA and the burden of proof shifted to the respondent for rebuttal of the case of harassment. The Equality Officer noted the evidence of the manager that he was of the opinion that all three of the students were all equally involved in the incident and equally to blame. The Equality Officer was satisfied that Mr. B took a reasonable approach in dealing with the situation there and then and noted the evidence that all students were trained up on the Safety Statement and were also invited into a group discussion to reinforce a positive message in the college following the complainant lodging a series of complaints against students and teachers with management. The Equality Officer was satisfied that the respondent undertook an internal investigation, which on one occasion resulted in a student being sanctioned. The Equality Officer referred to section 11(3) and the possibility of a defence for an educational establishment and he was satisfied that the respondent had done all within its powers and had taken such steps as were reasonably practicable to deal with the complaints lodged and to prevent harassment in the college. The Equality Officer found in favour of the respondent educational establishment and the complainant was not successful in his claim of harassment on the ground of sexual orientation.

Case Study 3: [Mr. and Mrs. X \(on behalf of their son, Mr. Y\) v A Post Primary School DEC-S2010-024](#)

The complainant parents made a complaint on behalf of their son against the respondent secondary school claiming that he was discriminated against by the respondent on the grounds of his disability and that he was also subjected to victimisation and harassment. The student son had been assessed with specific language and learning difficulties and had special educational needs as a result of his disability. The part of the claim relating to harassment of their son by the respondent referred to a number of incidents such as the allegation that the respondent school had engaged in excessive recording of their son's behaviour during his attendance at the school and that had the effect of placing him under undue stress and pressure. The mother also claimed that her son's SNA took a photograph of him during an incident which she claim was unacceptable and inappropriate in the context of the provision of educational services. The mother said that the respondent had accepted that the photos should not have been taken but that no sanctions were imposed upon his SNA in relation to the incident.

The respondent denied that the complainant was subjected to harassment and denied that it engaged in excessive recording in relation to the son's behaviour and that the manner in which his behaviour was recorded was no different than that of any other student. The respondent submitted that it was consistent with the School's Code of Behaviour which all families in the school had formally subscribed. The respondent said that it experienced severe difficulties in terms of the child's behaviour and that it had to take appropriate action to address these difficulties. The respondent said that when it was first informed of the photograph incident the principal had stated that he found it difficult to accept that that SNA would have done as alleged and cautioned the student that it was a very serious allegation to make but advised him and his mother that he would investigate the matter. It was accepted that the SNA had acknowledged that she had taken a photograph of him during an incident and the principal had investigated the matter thoroughly and requested the SNA to delete the photograph from her phone and advised her that it was improper and contrary to acceptable practice and the principal had apologised to the complainants.

The Equality Officer had considered the respondent's evidence that it encountered significant difficulties in terms of the student's behaviour during the course of his attendance at the school and that it was necessary for it to take appropriate action in order to address this

behaviour. The Equality Officer stated that he was satisfied that he had not been presented with any evidence from which he could reasonably conclude that any actions or measures which were taken by the respondent in response to the student's behavioural issues (including the monitoring of this behaviour) were in any way connected to his disability and that the complainant failed to establish a case of harassment.

The Equality Officer accepted that the manner in which the SNA acted in relation to the incident with the photograph was improper and totally inappropriate in the context of a classroom situation, however he stated that he was not been presented with any evidence from which he could conclude that the actions of the SNA in relation to this incident were in any way motivated or connected to the student's disability but rather it was a reaction to a disciplinary situation that arose during the course of the class in question. The Equality Officer was not satisfied that it constitutes harassment within the meaning of section 11 of the Equal Status Acts.

[Case Study 4: *Two Complainants \(A Mother and her Son\)v A Primary School DEC-S2006-028*](#)

The complainants, a mother and her son, made a complaint against a primary school alleging that they were discriminated against on the disability and traveller community grounds. The complainants also claimed that they were harassed.

The complainant mother claimed that her son was bullied and called names at school and the management failed to deal with the problem. It was claimed that the son was constantly blamed and was suspended from school and the mother was regularly called to meetings with the school to discuss the son's behavioural problems. The mother stated that during one parent/teacher meeting a Garda entered the meeting room with the intention of attending the meeting without her prior knowledge or consent and she left the meeting. It was also submitted that the son was refused Confirmation because he had lodged a complaint of discrimination under the ESA.

The school denied that the complainants were discriminated against or harassed on either the Traveller community or disability ground and stated that while they knew that the complainants were Travellers they were not aware of their disability. The school stated that it welcomed travellers and had appointed a Resource Teacher for travellers. It was stated that the son misbehaved in school and was subject to the normal disciplinary procedures of the school and his parents were consulted about his behaviour. It was admitted that a Garda did attend a meeting scheduled with the mother but that it was only to offer “friendly advice” in relation to the child’s behaviour. The school stated that the son was not Confirmed because he was not attending school and had not attended all the preparation classes for the Confirmation.

The Equality Officer concluded that the mother’s literacy difficulties were not a disability which came within the definition of disability in the Act. In respect of the claim relating to the Garda attending the meeting it was found that the mother was treated less favourably on the Traveller community ground than a non-Traveller would have been treated in similar circumstances, in that it was not the practice of the school to invite a Garda to a parent/teacher meeting. The Equality Officer concluded that the mother was harassed on the Traveller community ground in relation to that incident in that she was subjected to an unwelcome act which was reasonable for her to have found the situation intimidating and for her to feel humiliated by the experience. The Equality Officer concluded that this would not have happened if the complainant had not been a Traveller.

The Equality Officer concluded that the son failed to establish a prima facie case on the Traveller community ground and was subject to the normal disciplinary procedures of the school when he misbehaved, and his parents were frequently called to the school to be informed of these problems. It was found that the son had not established that he was treated less favourably than a non-Traveller who was engaged in similar misbehaviour would have been treated. The Equality Officer was satisfied that the son had a disability in accordance with the Act and concluded that the respondent school failed to provide reasonable accommodation for him in that he was not prioritised to see the educational psychologist so that educational supports could be put in place to meet his needs, and without special educational facilities it was unduly difficult for him to avail of education in the school. The

Equality Officer also concluded that the complainant was victimised in that he was refused Confirmation because he was pursuing a complaint against the school under the Equal Status Act.

The Equality Officer found that the school unlawfully discriminated against and harassed the mother on the Traveller community ground contrary to Section 7(2) and Section 11 of the ESA and awarded her €850 compensation as redress for the effects of the discrimination. The Equality Officer found that the school failed to provide the son with reasonable accommodation awarded him €3,000 compensation and that he was victimised in terms of in terms of 3(2)(j) of the Act and awarded him €2,000 compensation as redress for the effects of the discriminatory treatment.

Case Study 5.

Although not occurring in an educational establishment the following case study is an example of conduct which has been held to be harassment on the ground of race.

The complainant made a complaint under the ESA in respect of an incident when she was buying a hot drink beverage from the respondent coffee shop. The complainant had ordered her hot drink from an employee and instead of writing her name on the cup, as was the usual practice, an employee drew an image depicting 'slanty eyes'. The complainant asserted that this was offensive to her because of the racial connotation and her Asian heritage. The adjudication officer held that the coffee shop was vicariously liable for the conduct of the employee. The adjudication officer considered it to be "unwanted conduct" and that the drawing of eyes on the cup amounted to racial harassment and therefore was prohibited conduct within the ambit of the Equal Status Act. The adjudication awarded the sum of €12000 in redress.

Decision and Redress

How does the WRC deliver the decision?

The WRC will deliver its decision in writing and will usually include a statement of the reasons why the decision was reached. A copy of the decision will be given to both the complainant and the respondent and it is published on the internet on the WRC website. Sometimes these decisions can be anonymised so as not to identify the parties involved.

If a complainant successfully demonstrates that they have been subjected to harassment and/or sexual harassment and that a respondent is responsible for it, what redress can they expect to obtain?

The outcome of a successful sexual harassment or harassment case can vary, depending on the circumstances of the case itself. The WRC can make an order for compensation and/or an order that the respondent take a specified course of action.

The maximum amount of compensation, or money, that can be awarded by the Workplace Relations Commission for discrimination under the ESA is the equivalent of the maximum amount that can be awarded by the District Court which is €15,000.

Orders directing a specified course of action, for example, a direction that the victim be issued an apology or a direction that the person who is responsible for harassment or sexual harassment undergo training or that a policy be created, may be made.

The WRC does not have any power in the enforcement of decisions or the award of compensations and that is a matter for the parties to arrange any implementation of the award. The District Court has the power to enforce decisions of the WRC.

Can the WRC award costs?

No, the WRC cannot award costs such as legal costs to a successful party but the WRC does have the power to award expenses such as travel expenses.

Appeals Process

If a complainant is not satisfied with the decision made at the WRC by an adjudication officer, what can they do?

Both complainants and respondents are entitled to appeal an adjudication officer's decision, and to seek a fresh decision.

The appeal must be lodged with the Circuit Court and this must be done within forty-two days of the date of the Adjudication Officer's decision being communicated to a complainant and respondent. This time limit cannot be extended. There is no further appeal possible except to the High Court on a point of law.

A claim instituted in the Circuit Court may also be appealed to the High Court on a point of law, and a notice of appeal must be filed within 10 days of the Circuit Court having made an order or a judgment. The [Courts Service website](#) provides more information.

For more information, please see the IHREC's standalone guide entitled "The Process for Instituting a Case at the Workplace Relations Commission Under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018"). [How you bring a case to the Workplace Relations Commission under the Employment Equality Acts and the Equal Status Acts.](#)

Contact details for the IHREC “your rights” service

- Call us on 018583000
- Email us on YourRights@ihrec.ie

You can also write to us at: Your Rights, Irish Human Rights and Equality Commission, 16-22 Green Street, Dublin 7.