

## **GUIDELINES FOR RESPONSE TO A CLAIM OF SEXUAL ASSAULT**

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## 1. WHAT DO WE UNDERSTAND BY "SEXUAL ASSAULT"?

The community's understanding of the term varies widely, but many people consider that if a person thinks they have been sexually assaulted, they have been. There are however instances of false accusations, or situations where the interaction of the person alleged to have been assaulted and the person alleged to be the perpetrator is complex and not entirely one sided. The passage of time between the event and the notification may lead to altered memory. Thus it is wise to keep an open mind when listening to allegations, but always taking them seriously.

Instances of sexual assault may include:

- Sexual behaviour that is offensive to another person
- Unwanted touching or exposure
- Verbal harassment of a sexual nature
- Being made to look at pornographic material
- Continuing a physical or sexual encounter, which may have started as consensual, after request to stop
- Physical injury or restraint involving sexual activity
- Forced or attempted sexual penetration against the wishes of the other person.
- Any sexual activity between a person and a minor in whom the age gap is greater than 2 years.

## 2. PRINCIPLES GUIDING RESPONSE TO NOTIFICATION OF ASSAULT

There are several possible situations where a student may reveal an incident of sexual abuse. The response may be different according to the circumstances in which the student reveals the sexual abuse and the experience and school status of the person to whom the student confides. Although the following principles apply, the form of the discussion, whether it is part of a student first bringing the matter up to someone they trust, or whether it is in the form of a formal interview or part of a health professional consultation, will determine the way the discussion or interview should proceed.

1. Take the notification seriously, even if you feel that there is doubt about the veracity, or the allegation may seem frivolous.
2. Listen to the student – as long as it takes!
3. Clarify matters of confidentiality and consent to disclose to a senior staff member and parents.
4. If appropriate, ask the student if they are comfortable with the interviewer (e.g. if a girl approaches a male staff member). A student should be given the opportunity of having a same sex staff member present when disclosing very sensitive sexual matters.

5. If practicable, ask the student if they would like a parent to be present during the interview. This could be important for younger students and day students.
6. It is desirable in most cases to have two staff members present when it is clear that sexual assault is involved. Consider involving another staff member in the interview whether the student requests this or not, especially if a girl notifies a male member of staff, or the staff member feels inexperienced.
7. Record details of the allegation contemporaneously, as soon after the discussion as possible. In a formal interview, it may be wise for the student to read what is documented and have the opportunity of altering or commenting on the record. Explain the privacy nature of the document.
8. Decide the extent that the student is at immediate risk, including self harm or retribution by others. The risk of physical consequences of sexual contact must be considered.
9. If the student is making a disclosure and the interview is a formal response to this, ensure the student understands the processes that may follow a disclosure, including possible legal consequence, and in the case of rape, of criminal action.
10. The notification information must be shared with an appropriate senior staff member who has responsibility for well being of the student.
11. The student's parents need to be informed promptly of the incident and the school's proposed response. If a student at the school is the person alleged to have caused the assault, his or her parents need to be informed promptly, but only after discussion with the student.

### **3. THE PERSON FIRST APPROACHED BY THE STUDENT**

**Position of trust.** The person whom the student has first approached has special responsibility to the student who has chosen them to disclose the information in a spirit of trust and in most cases great distress. Often the information will come up without prior indication that the student wants to disclose sexual abuse, and in this case it is usually best to allow the discussion to proceed. The member of staff however will at some stage need to consider whether someone else should be present, especially if a girl approaches a male staff member.

This brief guideline statement is to assist someone who is approached by a student to discuss a concern that turns out to be one of sexual abuse.

**Be prepared to listen to the student**, even if you feel uncomfortable in doing so. You may think it is not appropriate for you to hear what they are trying to tell you, but you will need to help the student talk to someone more appropriate.

**Do not give an absolute undertaking not to tell anyone else** about what the student tells you, even though they may implore you to tell no-one. As soon as it is clear that the student wants to tell you some very sensitive information and begs you to tell nobody, especially their parents, you will have to make your position clear so as not to break trust. You may say something along the lines of "I will respect your confidentiality, but I

would have to tell someone if I think you or someone else could be at any risk. In that case I would let you know what I was going to say and whom I would tell, and it would then be in confidence with a senior member of the staff on how to help you.”

When it is clear that the matter the student wants to reveal may be a question of sexual abuse, you should look for an opportunity to suggest that the matter is so important that you would like to **involve another staff member** to hear about it and help. Remember that sometimes a person may reveal something that is very worrying for them, or something for which they feel ashamed, but having told someone, regrets it and is reluctant to go over it again with someone else. For this reason, it is usually wise to involve a more senior or experienced staff member early rather than. It may be appropriate to discuss whether the student would prefer a male or female person to be involved. If medical examination is required, it is usual for the student to have the choice of doctor, unless it is out of normal hours and it is an emergency.

When a person reveals a very sensitive matter such as sexual abuse, even if the incident may seem relatively minor, they usually experience very strong emotions about it. This needs to be respected. Providing comfort and support is an important first response, and often the most important way to help the student. It is usually not helpful for the staff member to express their own feelings about what they are told.

Sometimes it may appear that the interaction between the student and the person whom they talked to is sufficient to help the student. It is not however appropriate for a staff member to conclude this without further discussion with an experienced senior member of staff. Even what seems to have been a relatively minor event may lead later to deeply felt emotions.

Offer to facilitate referral for counselling if the student would like this.

**Make notes of the discussion as soon as possible afterwards.** These should be included in the confidential student file. It may be important if later you are called to describe what took place if a parent or the student challenge the way the school handled the matter. It could be helpful also if an adult was involved in the sexual abuse and the matter goes to court.

**Student responsibility.** If the disclosure is to another student, it is essential that a staff member is involved as soon as possible. The student body should be informed about this and their responsibility, including that of the “bystander”.

#### **4.THE FORMAL INTERVIEW**

**Timing of interview.** The formal interview should normally be as soon as possible after the student makes the disclosure, even if inconvenient, and they should not be asked to come back later. If the incident was some time ago the student may ask for a suitable time to discuss it, but sometimes the courage to disclose doesn’t last long, or the student may be talked out of revealing the incident by friends or the alleged perpetrator.

**Confidentiality and privacy.** The student should be told about the question of confidentiality and privacy, but recognising that there must be further discussion in confidence with another staff member, particularly if there is any question of the student being at risk.. Later in the interview the question of informing parents will need to be discussed.

**Risk assessment.** It is important for the staff member to attempt some assessment of the risk to the student making the disclosure. Risks include self harm, running away, harassment from other students and health risks from the incident.

**Medical examination.** If there has been sexual penetration, it is essential to arrange a doctor to examine and if necessary carry out tests for STDs. This would normally be done by a doctor (a female doctor if the student is a girl) from the practice serving the school campus, but the student's choice of doctor (e.g. her usual GP) should be respected.

**Documentation.** The interview must be well documented at the time, recognising that the documentation should be kept in a secure area and not included in the student's medical or school file. A brief notation alluding to the presence of this documentation should however be made in these files. The student should have the opportunity of reading the documentation and commenting on it and requesting alterations. It should be signed by the staff member making the documentation.

**Informing Senior Staff.** The staff member(s) who have interviewed the student should discuss the matter with the Head of campus, and normally with the student's Head of House at Corio, and Head of Unit if at Timbertop.

**Reassuring the student.** The student must feel reassured that he/she is being taken seriously and that there will be an outcome from the disclosure. This involves making it clear that the student is believed and that there will be prompt follow up

## 5.ACTIONS TO FOLLOW THE FIRST NOTIFICATION

The staff responsible for the care of the student should ensure:

- **The student is safe** and supervised with provision made for immediate care by a member of staff or nurse until the matter has been resolved.
- **Referral for medical examination if sexual penetration..** This should be at once if there has been sexual penetration shortly before disclosure, otherwise as soon as possible.
- **The student feels safe.**

- **The student has access to formal counselling** if this seems appropriate and desired by the student.
- **Parents are informed**, normally by the Head of Campus.
- **Documentation is complete.** There is a need to make notes as an aide memoire in many cases, or in case there is enquiry into the school's actions and duty of care. (See below). Staff should use the form relating to significant incidents.
- **Senior school staff are informed.**
- **A plan for further action is formulated.**

#### **6.THE PERSON ALLEGED TO HAVE MADE THE ASSAULT.**

- If the person alleged to have assaulted the student is a student at the school, the Head of the student's House and Head of Campus should be informed, one or both of whom would normally interview the student.
- The student should be interviewed as soon as possible.
- The student should be given an opportunity to discuss privacy and confidentiality.
- The student should be supervised in case there are recriminations, or the student attempts to run away.
- This interview should be documented and the student given the opportunity to read the documentation and comment on it.
- The student should be listened to and his/her account respected until shown to be clearly incorrect. It should be recognized that investigation can show that the allegation is a result of misunderstanding or is mischievous.
- Parents should be informed of the allegation after discussing this with the student.
- If there has been sexual penetration, medical examination for STD may be required.
- The student may be referred for counselling if this seems appropriate and requested by the student.

## 7. DOCUMENTATION

- Documentation should be made in the interests of the student and to assist those caring for him or her. It is however possible that the file will be required for medico-legal, litigation or criminal action, and should therefore be written contemporaneously in a style suitable for this. This includes legible writing, unambiguous language that could not be misconstrued by a third party, a statement of who was present at the interview and dated and signed. Even rough notes should be kept, but could be subpoenaed if there was legal action or sought under freedom of information.
- Full documentation should be made and the file kept secure and separate from the student's medical or school file.
- There should be a brief note placed in the student's school and medical file stating that there is a separate secure file. In the event that there has been physical or medical examination or concerns about the health of the student, it is essential that there is some note in the medical file. There should also be a note if the student has received counselling.
- Students should always be given the opportunity to read the file recorded about them, unless it is deemed that it could be detrimental to their mental health to read their file.

## 8. ISSUES OF CONFIDENTIALITY AND PRIVACY

The student should always be offered confidentiality with the proviso that if he or she is considered at risk of serious consequence of the incident, confidentiality cannot be promised as it may not be in their interests.

It is a matter of natural justice that a person who is being accused of sexual assault, and who may have to answer for it, should have the opportunity of hearing the accusation and to respond to it. This may then impact on the right of confidentiality of the student who alleges to have been assaulted.

The student should be informed that the school stands in duty of care of all students and in this is responsible to the students' parents.

In almost all instances, parents of both the person alleging sexual assault and of the person alleged to have made the assault, should be informed as soon as possible. Very occasionally the school may not consider it in the student's best interest to inform his/her parents. This decision however needs full discussion with those involved and takes into

account the rights of the student to demand confidentiality from parents, and the parents' expectations of the school.

Under current legislation, parents do not have an automatic right to see their mature adolescent child's medical file without the permission of the child. Every effort should however be made to inform parents fully about any sexual assault alleged to have been made on their child.

## **9.LEGAL ASPECTS**

The people responsible for caring for the student who alleges sexual assault should be aware that there may be legal consequences. These may include criminal prosecution of the offender, litigation on behalf of the student, usually directed to the school and related to duty of care. In general, consideration should be given to informing the school's insurers.

## **10.RESPONSIBILITY TO THE SCHOOL**

The school is expected to have a duty of care towards all students and thus must take some responsibility if sexual assault occurs while the student is in the care of the school. It is far more likely that the school, rather than the perpetrator, would be held responsible if litigation was considered by parents or student. This may occur many years after the incident in relation to mental illness caused by the incident or perceived neglect by the school to protect him or her.

It is for these reasons, and also to ensure that the student receives all the care they need, that a Senior staff member be informed and that full documentation is made.

## **11.RISK OF ADVERSE OUTCOMES OF THE ALLEGED ASSAULT**

In formulating a plan of response to allegations of sexual abuse or assault, the possible adverse outcomes for the student should be considered. These include the following:

- Physical injury
- Sexually transmitted disease
- Pregnancy
- Loss of trust
- Fear of reprisal from other students
- Loss of reputation.
- Emotional distress
- Long term mental illness.



## **12.POLICE INVOLVEMENT**

If the assault has been by an adult, a report to police should be considered. It is not necessary to involve police if an incident is between students and the school and/or parents are taking appropriate action.

## **13.MANDATORY REPORTING**

State law demands that teachers, nurses and doctors report a child under the age of 17 who may be at risk of sexual or physical abuse and is not protected adequately from this. If a staff member considers that he or she should make a report under mandatory reporting, this should be done after discussion with the Head of Campus and Senior Medical Officer.

## **14.PARENTS : THEIR NEED TO BE INFORMED. THEIR EXPECTATIONS OF THE SCHOOL AND DUTY OF CARE**

The school should inform parents of any incident of alleged sexual assault on their child, particularly if this occurred while the student is in the care of the school, whether on campus or not. The parents of the student alleged to have made the assault should also be informed.

The question of what action to take if the student demands that her /his parents not be informed of their alleged assault, requires discussion with Senior school staff and with the student. Factors that may influence the school in considering the student's request to respect confidentiality and not tell their parents include the age and maturity of the student, the nature and seriousness of the alleged assault, parents expectations and the need for the school to meet its responsibility to parents.

## **15.SCHOOL POLICIES ON SEXUAL BEHAVIOUR AT THE SCHOOL.**

The school should have clear policies on sexual behaviour while on campus. It is common knowledge that sexual interaction between students in the school, particularly in Senior school, but also at Timbertop, does take place on and off campus, and cannot be fully prevented, even with very clear rules and close supervision.. Students need to understand the current interpretation of Sexual Assault, including activities that some may not consider assault including an activity which starts as consensual but continues after one person wants to stop, and sexual behaviour imposed by a socially mature student on a vulnerable student who is unprepared for a sexual approach. Students should also be aware of the dangers of sexual activity while drunk or under the influence of drugs.

**16. ACTIVE PROMOTION OF APPROPRIATE SEXUAL BEHAVIOUR AND RESPECT FOR OTHERS**

Any school policy about sexual behaviour and assault should be proactive and promote respect for others and the school community's expectations and well being.

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