



# ALLEGATIONS AGAINST STAFF POLICY

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## THE AIMS OF THIS POLICY

To ensure that any allegation made against a teacher or other member of staff or volunteer in an education setting is dealt with fairly, quickly, and consistently, in a way that provides effective protection for children, and at the same time supports the person who is the subject of the allegation. The guidance found in this policy is taken from the statutory guidance from the Department for Education (DFE).

## 1. LEGISLATION

WHAT LEGISLATION DOES THIS GUIDANCE RELATE TO?

- The Children Act 1989
- Section 175 of the Education Act 2002 (local authorities, governing bodies of maintained schools and institutions in the further education sector)
- Section 157 of the Education Act 2002 and the Education (Independent School Standards) (England) Regulations 2010
- The Children Act 2004
- Section 11 of the Children Act 2004 (other agencies)
- Sections 141F, 141G and 141H3 of the Education Act 2002.

## 2. DUTIES AS AN EMPLOYER

- 2.1. As an Employer, we have a duty of care to our employees. Therefore we will provide effective support for anyone facing an allegation and provide the employee with a named contact if they are suspended.
- 2.2. This guidance is about managing cases of allegations that might indicate a person would pose a risk of harm if they continue to work in regular or close contact with children in their present position, or in any capacity. It is used in respect of all cases in which it is alleged that a teacher or member of staff (including volunteers) in a school or FE college that provides education for children under 18 years of age has:
  - behaved in a way that has harmed a child, or may have harmed a child;
  - possibly committed a criminal offence against or related to a child; or
  - behaved towards a child or children in a way that indicates he or she would pose a risk of harm if they work regularly or closely with children.
- 2.3. The school will ensure that any allegation of abuse made against a teacher or other member of staff or volunteer in a school or FE college is dealt with very quickly, in a fair and consistent way that provides effective protection for the child and at the same time supports the person who is the subject of the allegation.

## 3. INITIAL CONSIDERATIONS

- 3.1. The procedures for dealing with allegations need to be applied with common sense and judgement. Many cases may well either not meet the criteria set out above, or may do so without warranting consideration of either a police investigation or enquiries by local authority children's social care services. In these cases, local arrangements will be followed to resolve cases without delay.
- 3.2. The school recognises that some rare allegations will be so serious they require immediate intervention by children's social care services and/or police. The Local Authority Designated Officer (LADO) will be informed of all allegations that come to the school's attention and appear to meet the criteria so they can consult police and children's social care services as appropriate.
- 3.3. The following definitions will be used when determining the outcome of allegation investigations:

- a) **Substantiated:** there is sufficient identifiable evidence to prove the allegation;
  - b) **False:** there is sufficient evidence to disprove the allegation;
  - c) **Malicious:** there is clear evidence to prove there has been a deliberate act to deceive and the allegation is entirely false;
  - d) **Unfounded:** there is no evidence or proper basis which supports the allegation being made. It might also indicate that the person making the allegation misinterpreted the incident or was mistaken about what they saw. Alternatively they may not have been aware of all the circumstances;
  - e) **Unsubstantiated:** this is not the same as a false allegation. It means that there is insufficient evidence to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.
- 3.4. In the first instance, the head teacher or chair of governors, will immediately discuss the allegation with the LADO. The purpose of the initial discussion is for the LADO and the case manager to consider the nature, content and context of the allegation and agree a course of action. The LADO may ask the case manager to provide or obtain relevant additional information, such as previous history, whether the child or their family have made similar allegations and the individual's current contact with children. There may be situations when the case manager will want to involve the police immediately, for example if the person is deemed to be an immediate risk to children or there is evidence of a criminal offence. Where there is no such evidence, the case manager will discuss the allegations with the LADO in order to help determine whether police involvement is necessary.
- 3.5. The initial sharing of information and evaluation may lead to a decision that no further action is to be taken in regard to the individual facing the allegation or concern; in which case this decision and a justification for it will be recorded by both the case manager and the LADO, and agreement reached on what information should be put in writing to the individual concerned and by whom. The case manager will then consider with the LADO what action should follow both in respect of the individual and those who made the initial allegation.
- 3.6. The case manager will inform the accused person about the allegation as soon as possible after consulting the LADO. It is extremely important that the case manager provides them with as much information as possible at that time. However, where a strategy discussion is needed, or police or children's social care services need to be involved, the case manager will not do that until those agencies have been consulted, and have agreed what information can be disclosed to the accused.
- 3.7. The school will consider carefully whether the circumstances of a case warrant a person being suspended from contact with children at the school or whether alternative arrangements need to be put in place until the allegation or concern is resolved. All options to avoid suspension will be considered prior to taking that step. (Please see further information on suspension below).
- 3.8. If the allegation is not demonstrably false or unfounded, and there is cause to suspect a child is suffering or is likely to suffer significant harm, a strategy discussion will be convened in accordance with *Working Together to Safeguard Children*. If the allegation is about physical contact, the strategy discussion or initial evaluation with the police will take into account that teachers and other school staff are entitled to use reasonable force to control or restrain pupils in certain circumstances, including dealing with disruptive behaviour.
- 3.9. Where it is clear that an investigation by the police or children's social care services is unnecessary, or the strategy discussion or initial evaluation decides that is the case, the LADO

will discuss the next steps with the case manager. In those circumstances, the options open to the school depend on the nature and circumstances of the allegation and the evidence and information available. This will range from taking no further action to dismissal or a decision not to use the person's services in future. Suspension will not be the default position: an individual will be suspended only if there is no reasonable alternative.

3.10 In some cases, further enquiries will be needed to enable a decision about how to proceed. If so, the LADO will discuss with the case manager how and by whom the investigation will be undertaken. In straightforward cases, the investigation will normally be undertaken by a senior member of the school. However, in other circumstances, such as lack of appropriate resource within the school, or the nature or complexity of the allegation it may require an independent investigator. Many local authorities will provide an independent investigation of allegations, often as part of our personnel services.

## **4. SUPPORTING THOSE INVOLVED**

- 4.1. The School has a duty of care to their employees. The school will act to manage and minimise the stress inherent in the allegations process. Support for the individual is key to fulfilling this duty. Individuals will be informed of concerns or allegations as soon as possible and given an explanation of the likely course of action, unless there is an objection by the children's social care services or the police. The individual will be advised to contact their trade union representative, if they have one, or a colleague for support.
- 4.2. The case manager will appoint a named representative to keep the person who is the subject of the allegation informed of the progress of the case and consider what other support is appropriate for the individual.
- 4.3. Parents or carers of a child or children involved will be told about the allegation as soon as possible if they do not already know of it. However, where a strategy discussion is required, or police or children's social care services need to be involved, the case manager will not do so until those agencies have been consulted and have agreed what information can be disclosed to the parents or carers. Parent or carers will also be kept informed about the progress of the case, and told the outcome where there is not a criminal prosecution, including the outcome of any disciplinary process. The deliberations of a disciplinary hearing, and the information taken into account in reaching a decision, cannot normally be disclosed, but the parents or carers of the child will be told the outcome in confidence.
- 4.4. Parents and carers will also be made aware of the prohibition on reporting or publishing allegations about teachers in section 141F of the Education Act 2002. If parents or carers wish to apply to the court to have reporting restrictions removed, they will be asked to seek legal advice.
- 4.5. In cases where a child may have suffered significant harm, or there may be a criminal prosecution, children's social care services, or the police as appropriate, will consider what support the child or children involved may need.

## 5. CONFIDENTIALITY

- 5.1. The school will make every effort to maintain confidentiality after an allegation has been made and will guard against unwanted publicity while the allegation is being investigated or considered.
- 5.2. The case manager will take advice from the LADO, police and children's social care services to agree the following:
  - who needs to know and, importantly, exactly what information can be shared;
  - how to manage speculation, leaks and gossip;
  - what, if any information can be reasonably given to the wider community to reduce speculation; and
  - how to manage press interest if and when it should arise.

## 6. RESIGNATIONS AND 'COMPROMISE AGREEMENTS'

- 6.1. If the accused person resigns, or ceases to provide their services, this will not prevent an allegation being followed up in accordance with this guidance. The school will ensure that every effort is made to reach a conclusion in all cases of allegations bearing on the safety or welfare of children, including any in which the person concerned refuses to cooperate with the process. Wherever possible the accused will be given a full opportunity to answer the allegation and make representations about it. But the process of recording the allegation and any supporting evidence, and reaching a judgement about whether it can be substantiated on the basis of all the information available, will continue even if that cannot be done or the accused does not cooperate. It may be difficult to reach a conclusion in those circumstances, and it may not be possible to apply any disciplinary sanctions if a person's period of notice expires before the process is complete, but it is important to reach and record a conclusion wherever possible.
- 6.2. So-called 'compromise agreements', by which a person agrees to resign if the employer agrees not to pursue disciplinary action, and both parties agree a form of words to be used in any future reference, will not be used in these cases. Such an agreement will not prevent a thorough police investigation where that is appropriate. Nor can it override the statutory duty to make a referral to the Independent Safeguarding Authority (ISA) (Disclosure and Barring Service (DBS) where circumstances require that.

## 7. RECORD KEEPING

- 7.1. Details of allegations that are found to have been malicious will be removed from personnel records. However, for all other allegations, it is important that a clear and comprehensive summary of the allegation, details of how the allegation is followed up and resolved, and a note of any action taken and decisions reached, is kept on the confidential personnel file of the accused, and a copy will be provided to the person concerned.
- 7.2. The purpose of the record is to enable accurate information to be given in response to any future request for a reference, where appropriate. It will provide clarification in cases where future DBS Disclosures reveal information from the police about an allegation that did not result in a criminal conviction and it will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time. The record will be retained at least until the accused has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer.

## 8. REFERENCES

- 8.1. Cases in which an allegation was proven to be false, unsubstantiated, unfounded or malicious will not be included in employer references. A history of repeated concerns or allegations which have all been found to be unsubstantiated, malicious etc. will also not be included in any reference.

## 9. TIMESCALES

- 9.1. The school will ensure it will resolve cases as quickly as possible consistent with a fair and thorough investigation. All allegations will be investigated as a priority to avoid any delay. Target timescales are shown below: the time taken to investigate and resolve individual cases depends on a variety of factors including the nature, seriousness and complexity of the allegation, but these targets will be achieved in all but truly exceptional cases. The expectation is that 80 per cent of cases will be resolved within one month, 90 per cent within three months, and all but the most exceptional cases will be completed within 12 months.
- 9.2. For those cases where it is clear immediately that the allegation is unfounded or malicious, they will be resolved within one week. Where the initial consideration decides that the allegation does not involve a possible criminal offence it will be for the school to deal with it, although if there are concerns about child protection, the school will discuss with the LADO. In such cases, if the nature of the allegation does not require formal disciplinary action, the school will institute appropriate action within three working days. If a disciplinary hearing is required and can be held without further investigation, the hearing will be held within 15 working days.

## 10. SUSPENSION

- 10.1. The possible risk of harm to children posed by an accused person will be evaluated and managed in respect of the child(ren) involved in the allegations. In some rare cases that will require the case manager to consider suspending the accused until the case is resolved. Suspension will not be an automatic response when an allegation is reported; all options to avoid suspension will be considered prior to taking that step. If the case manager is concerned about the welfare of other children in the community or the teacher's family, those concerns will be reported to the LADO or police. But suspension is highly unlikely to be justified on the basis of such concerns alone.
- 10.2. Suspension will be considered only in a case where there is cause to suspect a child or other children at the school is/are at risk of significant harm or the case is so serious that it might be grounds for dismissal. However, a person will not be suspended automatically: the case manager will consider carefully whether the circumstances warrant suspension from contact with children at the school or until the allegation is resolved, and will seek advice from their personnel adviser and the LADO.
- 10.3. The case manager will also consider whether the result that would be achieved by immediate suspension could be obtained by alternative arrangements. In many cases an investigation can be resolved quickly and without the need for suspension. If the LADO, police and children's social care services have no objections to the member of staff continuing to work during the investigation, the case manager will be as inventive as possible to avoid suspension.

Based on assessment of risk, the following alternatives will be considered by the case manager before suspending a member of staff:

- redeployment within the school so that the individual does not have direct contact with the child or children concerned;
- providing an assistant to be present when the individual has contact with children;
- redeploying to alternative work in the school so the individual does not have unsupervised access to children;
- moving the child or children to classes where they will not come into contact with the member of staff, making it clear that this is not a punishment and parents have been consulted; or
- temporarily redeploying the member of staff to another role in a different location, for example to an alternative school.

10.4. These alternatives allow time for an informed decision regarding the suspension and possibly reduce the initial impact of the allegation. This will, however, depend upon the nature of the allegation. The case manager will consider the potential permanent professional reputational damage to employees that can result from suspension where an allegation is later found to be unsubstantiated, unfounded or maliciously intended.

10.5. If immediate suspension is considered necessary, the rationale and justification for such a course of action will be agreed and recorded by both the case manager and the LADO. This will also include what alternatives to suspension have been considered and why they were rejected.

10.6. Where it has been deemed appropriate to suspend the person, written confirmation will be dispatched within one working day, giving as much detail as appropriate for the reasons for the suspension.

## **11. INFORMATION SHARING**

11.1. In a strategy discussion or the initial evaluation of the case, the agencies involved will share all relevant information they have about the person who is the subject of the allegation, and about the alleged victim.

11.2. Where the police are involved, wherever possible the school will ask the police to obtain consent from the individuals involved to share their statements and evidence for use in the employer disciplinary process. This will be done as their investigation proceeds and will enable the police to share relevant information without delay at the conclusion of their investigation or any court case.

11.3. Children's social care services will adopt a similar procedure when making enquiries to determine whether the child or children named in the allegation are in need of protection or services, so that any information obtained in the course of those enquiries which is relevant to a disciplinary case can be passed to the school without delay.



## 12. ACTION FOLLOWING A CRIMINAL INVESTIGATION OR A PROSECUTION

- 12.1. The police or the Crown Prosecution Service (CPS) should inform the school and LADO immediately when a criminal investigation and any subsequent trial is complete, or if it is decided to close an investigation without charge, or not to continue to prosecute the case after person has been charged. In those circumstances the LADO will discuss with the case manager whether any further action, including disciplinary action, is appropriate and, if so, how to proceed. The information provided by the police and/or children's social care services will inform that decision. The options will depend on the circumstances of the case and consideration will be taken into account the result of the police investigation or the trial, as well as the different standard of proof required in disciplinary and criminal proceedings.

## 13. ACTION ON CONCLUSION OF A CASE

- 13.1. If the allegation is substantiated and the person is dismissed or the school ceases to use the person's services, or the person resigns or otherwise ceases to provide his or her services, the LADO will discuss with the case manager and their personnel adviser whether to refer the case to the DBS agency for consideration of inclusion on the barred lists; or to refer to the Teaching Agency.
- 13.2. There is a legal requirement for the school to make a referral to the DBS agency where we feel that an individual has engaged in conduct (including inappropriate sexual conduct) that harmed (or is likely to harm) a child; or if a person otherwise poses a risk of harm to a child. In such circumstances, the duty to refer an individual to the DBS arises where the school has removed the individual from relevant work with children or the person has chosen to cease relevant work in circumstances where they would have been removed had they not done so. The DBS will consider whether to bar the person from working in regulated activity, which will include most work in schools and other educational establishments. Referrals will be made as soon as possible after the resignation or removal of the member of staff involved and within one month of ceasing to use the person's services.

### **Professional misconduct cases will be referred to the relevant regulatory body.**

- 13.3. Where it is decided on the conclusion of a case that a person who has been suspended can return to work, the case manager will consider how best to facilitate that. The case manager will also consider how the person's contact with the child or children who made the allegation can best be managed if they are still a pupil at the school.

## 14. ACTION IN RESPECT OF UNFOUNDED OR MALICIOUS ALLEGATIONS

- 14.1. If an allegation is determined to be unfounded or malicious, the LADO will refer the matter to the children's social care services to determine whether the child concerned is in need of services, or may have been abused by someone else. If an allegation is shown to be deliberately invented or malicious, the headteacher, will consider whether any disciplinary action is appropriate against the pupil who made it; or whether the police should be asked to consider if action might be appropriate against the person responsible, even if he or she was not a pupil.

## APPENDIX A - PROCEDURES

### Procedures

All schools should have procedures for dealing with allegations and all staff and volunteers should understand what to do if they receive an allegation against another member of staff, or if they themselves have concerns about the behaviour of another member of staff.

The Person responsible for dealing with allegation of abuse against teachers and staff is the head teacher. If the allegation is against the head teacher, the person responsible is the Chair of governors/proprietor.

It is important to ensure that all allegations are examined objectively by someone independent of the school/college. Consequently, the local authority designated Officer, LADO, will be informed of allegations that come to the school's attention and appear to meet the following criteria

It is alleged that a teacher or a member of staff (including a volunteer) in a school, FE college or other education establishment that provide education for children under 18 years of age has:

- behaved in a way that has harmed a child, or may have harmed a child;
- Possibly committed a criminal offence against or related to a child; or
- Behaved towards a child or children in a way that indicates s/he is unsuitable to work with children.

These behaviours should be considered within the context of the four categories of abuse (i.e. physical, sexual and emotional abuse and neglect).

These include concerns relating to inappropriate relationships between members of staff and children or young people, for example:

- Having a sexual relationship with a child under 18 if in a position of trust in respect of that child, even if consensual (ss16-19 Sexual Offences Act 2003).
- 'Grooming', i.e. meeting a child under 16 with intent to commit a relevant offence (s15 Sexual Offences Act 2003);
- Other 'grooming' behaviour giving rise to concerns of a broader child protection nature (e.g. inappropriate text / e-mail messages or images, gifts, socialising etc);
- Possession of indecent photographs / pseudo-photographs of children.

The parent/s and the child should be helped to understand the processes involved and be kept informed about the progress of the case and of the outcome where there is no criminal prosecution. This will include the outcome of any disciplinary process, but not the deliberations of, or the information used in, a hearing.

The head teacher/chair of governors should seek advice from the education LADO, the police and / or LA children's social care about how much information should be disclosed to the accused person.

The head teacher should record the details of the allegation without conducting an investigation because it may prejudice any subsequent investigations that may be needed by the police or social care professionals.

The head teacher needs to establish if there are any witnesses to the incident and if any injuries may have resulted to anyone concerned. Statements should be taken from all concerned. 4

There may be up to three strands in the consideration of an allegation:

- a police investigation of a possible criminal offence;
- enquiries and assessment by children's social care about whether a child is in need of protection or in need of services;
- consideration by the school or FE college of disciplinary action in respect of the individual.

Where a strategy discussion is needed, (police / children's social care may need to be involved), the head/chair of governors will not discuss with the accused until those agencies have been consulted, and have agreed what information can be disclosed to the person. Informing the accused may jeopardise an investigation by the police where they suspect that a criminal offence may have been committed.

If the person is a member of a union or professional association s/he should be advised to contact that organisation for support and advice after the strategy discussion.

If the allegation is about physical contact, the strategy discussion or initial evaluation with the police should take account of the fact that teachers and other school and FE college staff are entitled to use reasonable force to control or restrain pupils in certain circumstances, including dealing with disruptive behavior, under s550A of the Education Act 1996.

### **Suspension - should be considered in any case where:**

- There is cause to suspect a child is at risk of significant harm; or
- The allegation warrants investigation by the police; or
- The allegation is so serious that it might be grounds for dismissal.

The possible risk of harm to children posed by an accused person needs to be effectively evaluated and managed – in respect of the child(ren) involved in the allegations, and any other children in the individual's home, work or community life. In some cases that will require the school to consider suspending the person until the case is resolved.

- Suspension should be considered in any case where there is cause to suspect a child is at risk of significant harm, or the allegation warrants investigation by the police, or is so serious that it might be grounds for dismissal. Schools and FE colleges should also consider whether the result that would be achieved by suspension could be obtained by alternative arrangements.
- Neither the local authority, the police, nor children's social care, can require a school to suspend a member of staff or a volunteer. The power to suspend is vested in the head teacher and the governing body of the school.

### **Action in respect of false Allegations**

If an allegation is determined to be false the matter will be referred to Children's social care to determine whether the child concerned is in need of services, or may have been abused by someone else.

If the allegation is shown to have been deliberately invented or malicious, the head teacher should consider whether any disciplinary action is appropriate against the pupil who made it, or the police should be asked to consider whether any action might be appropriate against the person responsible if s/he was not a pupil.

## **Resignations and Compromise Agreements**

The fact that a person tenders his or her resignation, or ceases to provide their services, must not prevent an allegation being followed up. The process of reaching a judgement about whether it can be regarded as substantiated on the basis of all the information available should continue even if that cannot be done or the person does not cooperate.

“Compromise agreements” by which a person agrees to resign, the school agrees not to pursue disciplinary action, and both parties agree a form of words to be used in any future reference, will not be used in these cases. Such an agreement will not override the statutory duty to make a referral to List 99 where circumstances require that.

## **Record Keeping**

It is important that a clear and comprehensive summary of any allegations made, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, is kept on a person’s confidential personnel file, and a copy provided to the person concerned. The purpose of the record is to enable accurate information to be given in response to any future request for a reference if the person has moved on.

The record should be retained at least until the person has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer 6

**Process following either a discussion with the LA designated officer or the decision of the strategy meeting is for the matter will be dealt with by the employer.**

- If the nature of the allegation does not require formal disciplinary action, the head teacher should institute appropriate action within three working days.
- Where further investigation is required to inform consideration of disciplinary action the head teacher and the human resources personnel adviser should discuss who will undertake that.
- The investigating officer should aim to provide a report to the employer within 10 working days.
- On receipt of the report of the disciplinary investigation, the head teacher, chair of governors and human resources personnel adviser should decide whether a disciplinary hearing is needed within two working days.
- If a hearing is needed it should be held within 15 working days.
- In any case in which children's social care has undertaken enquiries to determine whether the child or children are in need of protection, the head teacher or principal and chair of governors will take account of any relevant information obtained in the course of those enquiries when considering disciplinary action.
- The local authority designated officer will continue to liaise with the school or FE college to monitor progress of the case and provide advice or support.