

ALLEGATIONS AGAINST STAFF POLICY

SEPTEMBER 2018

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INTRODUCTION

This policy outlines the initial response process to an allegation of abuse against a teacher or another member of staff. Further in depth guidance, particularly action following the outcome of an initial investigation please refer to DfE Guidance.

All academies within the New Horizons Hub of London South East Academy Trust take their responsibility of care for its students seriously and fully endorse the principles and practice under the statutory Department for Education Guidance, Keeping Children Safe in Education September 2018 and Disclosure and Barring Service.

We recognise that any possibility that a member of staff may have hurt a student must be investigated thoroughly, but in a way that does not prejudice either the child or young person or the member of staff. Any investigation of an allegation of abuse against a member of staff must follow the objective, professional standards and routines described within this policy.

***Allegations of abuse against staff should not be dealt with under the school's general complaints procedure.**

The allegations of abuse by staff procedures are based on the following:

- Keeping Children Safe in Education September 2018 – Part 3, p29: Safer Recruitment.
- Making Referrals to the DBS Guidance November 2017 – Harm Test

<https://www.gov.uk/guidance/making-barring-referrals-to-the-dbs#what-is-the-harm-test>

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/737289/Keeping_Children_Safe_in_Education_Sept_2018.pdf

The framework for managing cases of allegations of abuse against people who work with children is set out in:

- Keeping Children Safe in Education September 2018 - , Part 4, p51: Allegations of abuse made against teachers and other staff.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/737289/Keeping_Children_Safe_in_Education_Sept_2018.pdf

CONFIDENTIALITY

It is essential any allegations of abuse made against a teacher or other member of staff is dealt with promptly, in a proper and measured manner. This means priority, fairly, consistently, in a way that provides effective protection for the child whilst protecting the rights and livelihood of the person accused. The Education Act 2002 contains measures to introduce reporting restrictions preventing the publication of a teacher's identity when accused by, or on behalf of, a student until the point they are charged with an offence or until the Secretary of State or the General Teaching Council for Wales publishes information about an investigation or decision in a disciplinary case arising from the allegation. Restrictions would also lift if the individual to whom the restrictions apply publicly put forward their side of the story or gave their written consent for another to do so.

INITIAL ALLEGATION

Any allegation of abuse to a student by a teacher must be reported to the relevant Head of School in the first instance. It is then their responsibility to immediately inform the Inclusion Manager, Jane Baldwin or the Executive Headteacher Jo Southby who will provide advice and guidance. Should the initial allegation first be made to anyone other than the Head of School, that member of staff must directly share the information with the Head of School or if that is not possible to pass details directly to the Inclusion Manager, Jane Baldwin or the Executive Headteacher, Jo Southby.

Designated Safeguarding Leads will not investigate allegations made against members of staff as this is the duty of the Head of School in partnership with the Inclusion Manager and Executive Headteacher and Governors when appropriate.

Should an allegation be made against the Head of School, a Designated Safeguarding Lead or Inclusion Manager, the matter should be brought to the attention of the Executive Headteacher immediately. Should an allegation be made against the Executive Headteacher than this should immediately be brought to the attention of the Chair of Governors.

Should the allegation meet any of the following criteria then the Head of School, with support and guidance from the Inclusion Manager when required, should report the allegation to the local authority designated officer as soon as practically possible once all relevant initial information has been gathered.

An 'allegation' refers to any information or concern which suggests an adult who works with children 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*
- *Behaved towards a child or children in a way that indicates s/he would pose a risk of harm if they work regularly or closely with children.*

An allegation can arise in connection with an employee's work with children, their own children or other children living outside the family. The concern or allegation could relate to a current or historical concern.

An allegation can be made in a number of ways:

- *Directly by the child*
- *Indirectly, for example by friends of the child*
- *Complaint from a parent/carer to a Headteacher/Manager, Children's Social Care or the Police*
- *Report from a colleague or another agency*
- *Anonymously*

INITIAL CONSIDERATION

All allegations are taken seriously and acted upon. The management of allegations sits within an effective cycle of good practice and partnership working, which exists both to protect our students and those who work with them.

Upon receipt of allegation/concern the Head of School should not investigate the allegation at this stage. They will seek advice from the Inclusion Manager and/or Executive Headteacher and

they will consider the nature, content and context of the allegation, gather any available initial information and agree the next course of action. Each Head of School has the responsibility to determine the next steps and if a referral to the Local Authority Designated Officer is required, this will take place within 1 working day either verbally or in writing following the correct referral process.

The Head of School will lead discussions in the first instance, with the Local Authority Designated Officer' (LADO) at the London Borough of Bexley and provide any further details of the allegation and the circumstances in which it was made.

The contacts details are:

Name: James McMillan
Position: Local Authority Designated Officer
Organisation: London Borough of Bexley
Telephone Number: 020 3045 3256
Email Addresses: James.mcmillan@bexley.gov.uk
lado@bexley.gov.uk

If the allegation is not patently false and there is cause to suspect that a student is suffering or is likely to suffer significant harm, the Local Authority Designated Officer will immediately refer to children's social care and ask for a strategy discussion to be convened immediately, in accordance with Working Together to Safeguard Children July 2018.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/729914/Working_Together_to_Safeguard_Children-2018.pdf

In those circumstances the strategy discussion should include the local authority designated officer and/or Inclusion Manager, Safeguarding Liaison Officer and Executive Headteacher.

If there is not cause to suspect that "significant harm" is an issue, but a criminal offence might have been committed, the Local Authority Designated Officer should immediately inform the police and convene a similar discussion to decide whether a police investigation is needed. That discussion will also involve the school and any other agencies involved with the student.

Historic allegations of abuse and those against members of staff who are no longer employed must be referred directly to the police.

STRATEGY MEETINGS

These three strands need to be thoroughly assessed and a definite conclusion reached on each of them. To ensure this happens, a 'Strategy Meeting' should take place to plan any enquiries, allocate tasks and set timescales. The meeting should consider not only the children directly involved in the allegation or concern but also any other children who could have suffered, or are at risk of suffering, harm. This could include an employee's own children. There may be times when the concerns raised do not directly involve any children but there is a concern about how an individual has conducted themselves. An example of this could be an individual who has been arrested or convicted of a violent offence against another adult or accessed pornographic material whilst at work.

These meetings are held under the Local Safeguarding Children Board (LSCB) Procedures: they are not part of any disciplinary procedure. There may be circumstances in which the meeting could take place before an employee has been made aware of the allegation. The Strategy Meeting should include representatives from the Police and the relevant Social Care teams, a manager from the relevant place of work and a Human Resources advisor. In certain circumstances, representatives from health and education professionals involved with the child also are invited.

All relevant information will be shared and decisions made about what actions are to be taken next. For employees, if the initial evaluation establishes that a Police or Social Care investigation is not required, the matter may still need to be dealt with under disciplinary procedures. One reason for this is that the burden of proof in criminal cases is "beyond reasonable doubt" whereas the threshold of "the balance of probabilities" applies to disciplinary proceedings.

**Further reference to Strategy Meeting process please refer to 'Concluding an Investigation'.*

ACTION FOLLOWING INITIAL CONSIDERATION

Where the initial consideration decides that the allegation does not involve a possible criminal offence it will be for the Head of School and/or Inclusion Manager or Executive Headteacher to deal with it in consultation with School Governors and Bromley Trust HR. In such cases, if the nature of the allegation does not require formal disciplinary action, appropriate action should be instituted within three working days. This may include No Further Action and notification of decision should be disseminated to those necessary in writing. Next steps will be led by the Head of School in partnership with the Inclusion Manager, Executive Headteacher and School Governors.

Suspension should not take place without careful thought and consideration being given to other suitable alternatives, such as a transfer of duties or additional supervision. Suspension is a 'neutral' act that does not imply innocence or guilt and is designed to give the employee the right to representation and protects both parties (adult and child) until the matter is resolved. The decision to suspend remains solely with the Head of School and Executive Headteacher but they should consult the Inclusion Manager, Bromley Trust HR and LADO in making their decision.

If a disciplinary hearing is required and can be held without further investigation, the hearing should be held within 15 working days.

Where further investigation is required to inform consideration of disciplinary action the Executive Headteacher and the School Governors should discuss who will undertake that with the local authority designated officer.

The Investigating Officer should aim to provide a report to the employer within 10 working days.

The following definitions should 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.

Upon receipt of the report of the disciplinary investigation, the Head of School, Executive Headteacher and the School Governors should consult the Local Authority Designated Officer and decide whether a disciplinary hearing is needed within two working days. If a hearing is needed it should be held within 15 working days.

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 of School, Executive Headteacher and the School Governors should take account of any relevant information obtained in the course of those enquiries when considering disciplinary action.

Once disciplinary action is taking place, the Local Authority Designated Officer should continue to liaise directly with the Head of School and/or Executive Headteacher to monitor progress of the case and provide advice or support when required or requested.

CASE SUBJECT TO POLICE INVESTIGATION

If a criminal investigation is required, the Police will set target dates for reviewing progress and for consulting with the Crown Prosecution Service (CPS) about whether to proceed with the investigation. Decisions will then be made to charge the employee with an offence, caution the employee or decide no further action (NFA) is needed.

In almost all cases where the Police decide either,

- i. not to charge*
- ii. to administer a Caution, or*
- iii. if a court acquits the employee*

They (the Police), will under normal circumstances still pass all information that would be relevant to a disciplinary case (such as a summary of the investigation) to either the LADO or the relevant manager to assist the disciplinary investigation. If an employee is convicted of an offence, the Police should inform the employer straight away.

If the police and/or Crown Prosecution Service decide not to charge the individual with an offence or decide to administer a caution or the person is acquitted by a Court, the police should wherever possible aim to pass all information they have which may be relevant to a disciplinary case to the Executive Headteacher within 3 working days of the decision. In those circumstances the Executive Headteacher and the local authority designated officer should proceed as described above.

Any case in which children's social care has undertaken enquiries to determine whether the child or children are in need of protection, any information obtained in the course of those enquiries which is relevant to a disciplinary case should also be shared with the Head of School, and/or the Executive Headteacher.

CONCLUDING THE INVESTIGATION

Investigations whatever their nature, should be concluded as quickly as possible and should be concluded within one working month of the allegation becoming known. However, this is not always possible particularly where there is a complex police investigation or term holidays but employees should be kept up to date with what stage the investigation is at.

Depending on the scope and scale of the investigation/s, more than one Strategy Meeting may be needed before an outcome can be arrived at. At the final Strategy Meeting, the outcome of Police and Social Care enquiries will be discussed with the employer and consideration given as to whether the employee poses a risk to children and their suitability to work with children in their current position. The final strategy meeting should contain a summary of the allegations made and the conclusions of any investigations for future reference.

Recommendations should be made to the Head of School, and/or Executive Headteacher about the level of risk and/or any training issues that may have been identified. Where an allegation has been made but the threshold for harm is not met, the Head of School (in agreement with Bromley Trust HR) may deal with the issue as an internal matter.

MEDIA

Where there is concern the allegation has or may become high profile by becoming common knowledge or subject to speculation, it may become necessary to issue a brief statement to the press. Any media statements should only be given by the Executive Headteacher in liaison with School Governors, and London South East Academy Trust and where possible joint statements between the organisations involved should be made (i.e. police and CSC). Identifying information should not be given unless or until a person is charged.

The Police will not usually provide any information to the media that might identify the individual or compromise the investigations, unless or until the person is charged with a criminal offence (Authorised Professional Practice May 2017).

**Any information issued to the public or any section of the public should comply with Section 13 of the Education Act 2011 and in some instances the publication of information about allegations is an offence.*

DISCLOSURE AND BARRING SERVICE (DBS)

New Horizons Hub has a legal duty to refer anyone to the Disclosure and Barring Service (DBS) and teachers to the NCTL Prohibition List who has harmed, or poses a risk of harm to a child for consideration as to whether barring the employee from working with children is appropriate where;

- *the DBS Harm Test is satisfied in respect of that individual.*
- *the individual has received a caution or conviction for a relevant offence or if there is reason to believe that the individual has committed a listed relevant offence.*
- *the individual has been removed from working (paid or unpaid) in regulated activity or would have been removed had they not left.*

SUPPORTING THOSE INVOLVED

New Horizons Hub Senior Leadership Team has a duty of care to their employees. They should act to manage and minimise the stress inherent in the allegations process. Support for the individual is crucial to fulfilling this duty. Individuals should 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. Staff can also approach Support Line directly – www.supportline.org.uk

The person who is the subject of the allegation should be kept informed of the progress of the case and consideration should be given to what other support is appropriate for the individual. Particular care needs to be taken when employees are suspended to ensure that they are kept informed of both the progress of their case and current work-related issues. Social contact with colleagues and friends should not be prevented unless there is evidence to suggest that such contact is likely to be prejudicial to the gathering and presentation of evidence.

Parents or carers of a child or children involved should 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, we 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 should 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 should be told the outcome in confidence. Parents and carers should 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 should be told to seek legal advice. 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, should consider what support the child or children involved may need.

RESIGNATIONS AND 'COMPROMISE AGREEMENTS'

If the accused member of staff resigns during an investigation, or ceases to provide their services, this will not prevent an allegation being followed up in accordance with this policy in relation to referrals or DBS process. It is important 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 should be given a full opportunity to answer the allegation and make representations about it. 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 should 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. Resignation will not override the legal duty to make a referral to the Disclosure and Barring Service where circumstances require that.

RECORD KEEPING

Details of allegations that are found to have been malicious should 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 was followed up and resolved and a note of any action taken and decisions reached is kept on the confidential personnel file of the accused. A copy can be provided to the person concerned upon written request.

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 should 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.

Keeping of records is in line with GDPR 2018 and the Information Commissioners Employment Practices Code and supplementary guidance.

REFERENCES

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

DOCUMENT REVISION

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Aug 2015	JB	Initial version
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