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Unity Academy Trust Procedures for dealing with allegations against staff

Procedures for dealing with allegations against staff

For Safeguarding Children and Supporting Staff Who Are the Subject of Allegations

PURPOSE AND SCOPE

This policy relates to statutory guidance from the Department for Education. This means recipients must have regard to it when carrying out duties relating to handling allegations of abuse against teachers and other staff.

The Trust has a duty of care to its employees. It should ensure that it provides effective support for anyone facing an allegation and provide the employee with a named contact if they are suspended. 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 should be used in respect of all cases in which it is alleged that a teacher or member of staff (including volunteers) in the school 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.

It is essential that any allegation of abuse made against a teacher or other member of staff or volunteer in the school 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.

Key points:

- If an allegation is made against a teacher the quick resolution of that allegation should be a clear priority to the benefit of all concerned. At any stage of consideration or investigation, all unnecessary delays should be eradicated.
- In response to an allegation, staff suspension should not be the default option. An individual should only be suspended if there is no reasonable alternative. If suspension is deemed appropriate, the reasons and justification should be recorded by the school and the individual notified of the reasons.
- Allegations that are found to have been malicious should be removed from personnel records and any that are not substantiated, are unfounded or malicious should not be referred to in employer references.
- Students that are found to have made malicious allegations are likely to have breached school behaviour policies. The school will therefore consider whether to apply an appropriate sanction, which could include temporary or permanent exclusion (as well as referral to the police if there are grounds for believing a criminal offence may have been committed).
- All allegations should be reported straight away, normally to the head teacher. The Executive Headteacher and the Chair of Local Governors will be informed should the headteacher be absent, or the allegation is about the headteacher. All cases should be reported to the local authority designated officer (LADO) responsible for providing advice and monitoring cases. Should the allegation be about the Executive Headteacher, the Chair of Trustee Board must be informed immediately?

THE LAW

The framework for managing cases of allegations of abuse against people who work with children is set out in 'Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children' (March 2015) which provides an overview of how allegations should be handled. It is relevant for the purposes of s.157 and s.175 of the Education Act 2002.

Other legislation:

- The Children Act 1989
- The Children Act 2004
- Section 175 of the Education Act 2002 (local authorities, governing bodies of maintained schools and institutions in the further education sector)
- Section 11 of the Children Act 2004 (other agencies).
- Legal Aid, Sentencing and Punishment of Offenders Act 2012
- Police Reform and Social Responsibility Act 2011
- Childcare Act 2006

THE PROCEDURE

- The procedures for dealing with allegations need to be applied with common sense and judgement as well as taking into account best practice. Many cases may well either not meet the criteria set out above at all, or may do so without warranting consideration of a police investigation or enquiries by local authority children's services. In these cases local arrangements should be followed to resolve cases quickly and without delay.
- Some rare allegations will be so serious as to require immediate intervention by the local authority's social care services and/or police. The local authority designated officer (LADO) should be informed of all allegations that come to the school's attention and appear to meet the criteria so that he or she can consult police and local authority children's social care services as appropriate.
- In the first instance, the headteacher should immediately discuss the allegation with the LADO. The purpose of an initial discussion is for the LADO and the headteacher to consider the nature, content and context of the allegation and agree a course of action. The LADO may ask the senior manager to provide or obtain any additional information which may be relevant such as previous history, whether the child or their family have made similar allegations and the individual's current contact with children.
- This 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 should be recorded, by both the manager and the LADO, and agreement reached as to what information should be put in writing to the individual concerned and by whom. The manager should then consider with the LADO what action should follow in respect of the individual and those who made the initial allegation.
- The headteacher should inform the accused person about the allegation as soon as possible after consulting the LADO. He or she should provide them with as much information as possible at the time. However, where a strategy discussion is needed, or police or local authority's social care services need to be involved, the headteacher should not do that until those agencies have been consulted, and have agreed what information can be disclosed to the person. The headteacher must consider carefully whether the circumstances of a case warrant a person being suspended

from contact with children at the school until the allegation or concern is resolved. Please see further information on suspension.

- 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 should be convened in accordance with paragraph 5.56 of Working Together to Safeguard Children. 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 staff are entitled to use reasonable force to control or restrain Students in certain circumstances, including dealing with disruptive behaviour.
- Where it is clear that an investigation by the police or local authority children's social care services is unnecessary, or the strategy discussion or initial evaluation decides that is the case, the LADO should discuss the next steps with the headteacher. In those circumstances the options open to the school depend on the nature and circumstances of the allegation and the evidence and information available, and will range from taking no further action to summary dismissal or a decision not to use the person's services in future. Suspension should not be the default position – an individual should only be suspended if there is no reasonable alternative.
- In some such cases further enquiries will be needed to enable a decision about how to proceed. If so, the LADO should discuss with the head teacher and chair of governors how and by whom the investigation will be undertaken. In straightforward cases the investigation should normally be undertaken by a senior member of the school staff. However, in other circumstances lack of appropriate resource within the school, or the nature or complexity of the allegation will require an independent investigator. The bought in personnel service provides for an independent investigation of allegations.

SUPPORTING THOSE INVOLVED

Supporting the Employee

- The Trust has a duty of care to its employees. School leaders should act to manage and minimise the stress inherent in the allegations and disciplinary process. Support for the individual is key 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 local authority social care services or the police. The individual should be advised to contact their trade union representative, if they have one, or a colleague for support. They could also be given access to welfare counselling or medical advice.
- The school should 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. That may include support occupational health. 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 must not be prevented unless there is evidence to suggest that such contact is likely to be prejudicial to the gathering and presentation of evidence.

Supporting the Parents

- 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 local authority children's social care services need to be involved, the headteacher should not do so until those agencies have been consulted and have agreed what information can

be disclosed to the parents. They 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. In deciding what information to disclose, careful consideration should be given to the provisions of the Data Protection Act 1998, the law of confidence and, where relevant, the Human Rights Act 1998.

- In cases where a child may have suffered significant harm, or there may be a criminal prosecution, local authority social care services, or the police as appropriate, should consider what support the child or children involved may need.

CONFIDENTIALITY

- It is extremely important that when an allegation is made, the Trust makes every effort to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered. In accordance with the Association of Chief Police Officers (ACPO) guidance the police will not normally provide any information to the press or media that might identify an individual who is under investigation, unless and until the person is charged with a criminal offence. (In exceptional cases where the police might depart from that rule, e.g. an appeal to trace a suspect, the reasons should be documented and partner agencies consulted beforehand.)
- The school should take advice from the LADO, police and local authority 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
 - How to manage press interest if and when it should arise.

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 in accordance with these procedures. 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 person should 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 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. 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.
- By the same token so called 'compromise agreements', by which a person agrees to resign, if the school agrees not to pursue disciplinary action, and both parties agree a form of words to be used in any future reference, must not be used in these cases. In any event, 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) 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 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, where appropriate. It will provide clarification in cases where future CRB 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 resurfaces after a period of time. 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. The Information Commissioner has published guidance on employment records in its Employment Practices Code and supplementary guidance, which provides some practical advice on employment retention.

REFERENCES

Cases in which an allegation was proven to be 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 reference.

TIMESCALES

- It is in everyone's interest to resolve cases as quickly as possible consistent with a fair and thorough investigation. All allegations must be investigated as a priority so as to avoid any delay. Target timescales are shown below for different actions in the summary description of the process. 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 should be achieved in all but truly exceptional cases. It is expected that:
 - 80 per cent of cases should be resolved within one month
 - 90 per cent within three months
 - All but the most exceptional cases should be completed within 12 months.

- For those cases where it is clear immediately that the allegation is unfounded or malicious then it is expected that they should 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 employer to deal with it, although if there are concerns about child protection, the employer should discuss with the LADO. In such cases, if the nature of the allegation does not require formal disciplinary action, the headteacher should institute appropriate action within 3 working days. If a disciplinary hearing is required and can be held without further investigation, the hearing should be held within 15 working days.

OVERSIGHT AND MONITORING

- The LADO has overall responsibility for oversight of the procedures for dealing with allegations; for resolving any inter-agency issues, and for liaison with the Local Safeguarding Children Board (LSCB) on the subject. The designated local authority officer(s) will provide advice and guidance to the school, in addition to liaising with the police and other agencies, and monitoring the progress of cases to ensure that they are dealt with as quickly as possible consistent with a thorough and fair process. Reviews should be conducted at fortnightly or monthly intervals depending on the complexity of the case.

- Police forces should also identify officers who will be responsible for: liaising with the designated local authority officer(s), taking part in the strategy discussion, or initial evaluation, subsequently reviewing the progress of those cases in which there is a police investigation, and sharing information on completion of the investigation or any prosecution.
- If the strategy discussion or initial assessment decides that a police investigation is required, the police should also set a target date for reviewing the progress of the investigation and consulting the Crown Prosecution Service (CPS) about whether to: charge the individual; continue to investigate; or close the investigation. Wherever possible that review should take place no later than 4 weeks after the initial evaluation. Dates for subsequent reviews, ideally at fortnightly intervals, should be set at the meeting if the investigation continues.

SUSPENSION

- 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. In some cases that will require the school to consider suspending the person until the case is resolved. Suspension must not be an automatic response when an allegation is reported. If the school is concerned about the welfare of other children in the community or the teacher's family, those concerns should be reported to the LADO or police but suspension is highly unlikely to be justified on the basis of such concerns alone.
- Suspension should only be considered in a case where there is cause to suspect a child or other children at the school is or are at risk of significant harm, or the allegation warrants investigation by the police, or is so serious that it might be grounds for dismissal. However, a person should not be suspended automatically, or without careful thought being given to the particular circumstances of the case. The school must consider carefully whether the circumstances of the case warrant a person being suspended from contact with children at the school until the allegation is resolved, and may wish to seek advice from the personnel adviser.
- The school should also consider whether the result that would be achieved by suspension could be obtained by alternative arrangements. For example, redeployment so that the individual does not have direct contact with the child concerned, or providing an assistant to be present when the individual has contact with children. This allows time for an informed decision regarding the suspension and possibly reducing the initial impact of the allegation. This will however, depend upon the nature of the allegation. The school should consider the potential permanent professional reputational damage to teachers that can result from suspension where an allegation is later found to be unsubstantiated, unfounded or maliciously intended.
- Where it has been deemed appropriate to suspend the person, written confirmation should be dispatched within one working day, giving the reasons for the suspension. The person should be informed at that point who their named contact is within the organisation and provided with their contact details.
- Local authority children's social care services or the police cannot require the school to suspend a member of staff or a volunteer, although the school should give appropriate weight to their advice. The power to suspend is vested in the headteacher or the governing body who are the employers of staff at the school. However, where a strategy discussion or initial evaluation concludes that there should be enquiries by the local authority social care services and/or an investigation by the police, the LADO should canvass police and the local authority children's social care services for views about whether the accused member of staff needs to be suspended from contact with children to inform the school consideration of suspension.

INFORMATION SHARING

- In a strategy discussion or the initial evaluation of the case, the agencies involved should share all relevant information they have about the person who is the subject of the allegation, and about the alleged victim.
- Wherever possible the police should obtain consent from the individuals concerned to share the statements and evidence they obtain with the school for disciplinary purposes. This should 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.
- The local authority's social care services should 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.

ACTION FOLLOWING A CRIMINAL INVESTIGATION OR A PROSECUTION

The police or the Crown Prosecution Service (CPS) should inform the school and LADO straight away 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 should discuss with the head teacher and chair of governors whether any further action, including disciplinary action, is appropriate and, if so, how to proceed. The information provided by the police and/or the local authority social care services should inform that decision. The options will depend on the circumstances of the case and the consideration will need to take account of the result of the police investigation or the trial, as well as the different standard of proof required in disciplinary and criminal proceedings.

ACTION ON CONCLUSION OF A CASE

- 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 should discuss with the school and its personnel adviser whether a referral to the Independent Safeguarding Authority (ISA) for consideration of inclusion on the barred lists or to the GTC is required. There is a legal requirement for employers to make a referral to the ISA where they think 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 ISA arises where an employer 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. Professional misconduct cases should be referred to the relevant regulatory body. The ISA will consider whether to bar the person from working in regulated activity, which will include work in schools and other educational establishments. Local authorities, schools and other bodies all have a statutory duty to make reports, and to provide relevant information to the ISA. Referrals should 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.
- In cases where it is decided on the conclusion of the case that a person who has been suspended can return to work, the school should consider how best to facilitate that. Most people will benefit from some help and support to return to work after a very stressful experience. Depending on the individual's circumstances, a phased return and/or the provision of a mentor to provide assistance and support in the short term may be appropriate. The school should also consider

how the person's contact with the child (ren) who made the allegation can best be managed if they are still a pupil at the school.

LEARNING LESSONS

At the conclusion of a case in which an allegation is substantiated the LADO should review the circumstances of the case with the headteacher or the chair of governors to determine whether there are any improvements to be made to the school's procedures or practice to help prevent similar events in the future. This should include issues arising from the decision to suspend the member of staff, the duration of the suspension and whether or not suspension was justified.

ACTION IN RESPECT OF UNFOUNDED OR MALICIOUS ALLEGATIONS

If an allegation is determined to be unfounded or malicious, the LADO should refer the matter to local authority children's social care services to determine whether the child concerned is in need of services, or may have been abused by someone else. In the event that an allegation is shown to have been deliberately invented or malicious, the headteacher 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, even if he or she was not a pupil. In September 2010 the Crown Prosecution Service published guidance for the police on harassment under the Protection from Harassment Act 1997.

Date of policy: 31/1/18

This policy will be reviewed by the Board of trustees every 2 years.

Policy review date: January 2020