



*Enabling Partnerships of Excellence in Continuity of Education*

ASPIRE - STUDY - PERSEVERE



**Title:** **Disciplinary Policy and Procedure**  
(Adopted from Harrow School Disciplinary Policy & Procedure and Procedure by Harrow HR)

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**Date Reviewed:** 7<sup>th</sup> October 2024  
**Date Ratified:** 7<sup>th</sup> October 2024  
**Status:** Statutory  
**Delegation:** Management Committee  
**Review Frequency** Annually  
**Policy Review Date** October 2025

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## **DISCIPLINARY POLICY AND PROCEDURE FOR HARROW SCHOOLS**

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## 1. INTRODUCTION

This document sets out our commitment to providing a safe, respectful, and productive work environment for all employees. This policy outlines the procedures and guidelines that can be applied when an employee's conduct falls below acceptable standards. The aim is to help and encourage all employees to achieve and maintain the required standards of conduct and to ensure that the School is objective, reasonable and consistent in its approach to dealing with employee discipline issues. The policy is compliant with the ACAS code of practice and guidance.

## 2. SCOPE

2.1 The policy, procedure and Statutory Requirements set out in this document apply to all Teachers on Teachers pay and conditions and London Borough of Harrow employees employed in schools under London Borough of Harrow's terms and conditions of employment but does not apply to:

- staff engaged on temporary contracts of less than 6 months in duration (with the exception of incidents relating to safeguarding, see paragraph 2.2 below)
- new staff within their probationary period of employment and newly-qualified teachers during their statutory induction period (with the exception of incidents relating to safeguarding, see paragraph 2.2 below)
- where the employee has been barred from teaching by the Secretary of State, where the contract would be automatically terminated.
- where a determination that the employee should no longer work at the school is imposed by reason of any other statutory provision (e.g. lack of physical or mental fitness)

2.2 Where conduct problems concern an allegation against a member of staff relating to children or young people, or adults in a vulnerable situation, the guidance in Appendix 1 "Threshold document for Harrow Designated Officer Referrals must take precedence over this policy and procedure.

2.3 Where performance problems are identified as having arisen due to lack of capability, they will be addressed through the School's capability procedure.

### **3. ROLES AND RESPONSIBILITIES**

#### **3.1. Headteachers / Governors**

The Headteacher, or Chair of Governors (if the case concerns the Headteacher), is responsible for the management of standards of conduct within their School. The authority to take action under this Procedure rests with the Headteacher or Chair of Governors. The Headteacher will nominate those senior employees in the School who have the authority to give formal warnings – this will usually be the Deputy Head(s) and/or Assistant Head(s).

They will be responsible for:

- Apply the disciplinary policy fairly and ensure an employee is not being singled out unfairly and to ensure consistency.
- Inform the member of staff of any allegation against them, and give them the opportunity to respond before a decision has been reached.
- Appoint an Investigating Officer to investigate the allegations thoroughly.
- Determine whether it is necessary to suspend the member of staff.
- Any allegations of safeguarding should be reported to LADO who will advise on the process prior to any internal investigation being carried out.
- To appoint a clerk to organize a hearing committee and keep a record of any hearings or appeal hearing relating to the disciplinary matter.

#### **3.2 Clerk**

- Arrange a hearing committee and confirm who will be chairing the hearing.
- Organise a date and venue for the hearings.
- Keep all parties informed.
- Collate and put bundle documents together in a chronological order for panel members and staff member.
- Take minutes at the hearing.
- Draft formal letters using templates from HR e.g. invite letters / outcome letters.

### 3.3. Human Resources

- To provide advice and guidance to the headteacher, investigating officer and hearing / appeal committee.
- Attend the disciplinary hearing / appeal.
- Cross check all correspondences including invite letters and outcome letters.
- Ensure the policy is adhered to.
- Review hearing bundle to ensure it contains all relevant paperwork prior to be sent out
- Advise on procedural matters and best practice

### 3.4 Employee

- Achieve and maintain the required standards of conduct in accordance with existing school's policies and procedures and protocols

## 4. KEY PRINCIPLES

- 4.1 The provisions of the Equality Act 2010 will be applied throughout the implementation of this Policy.
- 4.2 To maintain high standards of conduct within the school and to encourage improvement in conduct where shortcomings are identified. This includes 'Personal and Professional Conduct' for Teachers as outlined in Part Two of the Teachers' Standards.
- 4.3 Where appropriate and whenever possible, to address conduct issues in the first instance without recourse to the formal stages of the disciplinary procedure.
- 4.4 To ensure that employees facing action under the formal stages of the disciplinary procedure are treated fairly and consistently.
- 4.5 Not to discriminate against any individual in the application of this policy and procedure on the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, maternity and pregnancy, race, religion or belief, sex, sexual orientation, or other grounds protected in law (e.g. part-time worker status, trade union membership or HIV positive status).

- 4.6 At every formal stage of the procedure, the employee will be advised, in writing of the nature of the allegation/s against them and will be given the opportunity to state their case.
- 4.7 Mitigating circumstances will be taken into account when considering any action under the formal disciplinary procedure.
- 4.8 Employees will have the right to be represented by a Trade Union representative or a work colleague at formal meetings or any meeting with the potential to lead to disciplinary action, e.g. investigation meeting held after suspension.
- 4.9 Employees will have the right to appeal against any disciplinary sanction.
- 4.10 No action will be taken against an accredited Trade Union representative until the matter has been discussed with a full time official employed by the union.
- 4.11 All disciplinary investigations, papers and any subsequent disciplinary hearings, appeals and outcomes will be dealt with in the strictest confidence.

## **5. INFORMAL ACTION**

- 5.1 In the course of normal day-to-day management the employee should be informed of any conduct issues by their manager and advised about how to correct such issues. Minor issues of misconduct will, initially, be dealt with informally as part of day-to-day management.
- 5.2 This process is regarded as the first step in addressing conduct issues and represents informal action outside of the school's formal Disciplinary Policy & Procedure. Informal action is appropriate for minor misconduct issues, and headteachers / managers should discuss any problems at the earliest opportunity with the aim to encourage and support the employee to prevent matters from escalating.
- 5.3 Where an issue directly concerns an employee's immediate line manager it may be helpful to involve an independent manager to reach an informal resolution.

5.4 Where informal action fails to bring about a remedy, further misconduct is likely to be considered within the formal stages of the School's Disciplinary Policy & Procedure and the employee shall be advised of this.

## 6. RULES ON CONDUCT

6.1 Examples of acts of misconduct which are likely to lead to formal action being taken are listed below. The list is not exhaustive:

- Failure to comply with a reasonable management instruction
- Failure to observe the Council's and/or School's Standing Orders, financial or other operational regulations
- Failure to observe Council/School policy, e.g. actions in breach of the Council's IT Security guidelines or the Council's data protection policy
- Negligence in the performance of duties
- Failure to provide a duty of care in the performance of role
- Breach of Health & Safety rules and requirements including any act or omission
- Poor-time keeping
- Misuse of School property and equipment including misuse of email, fax or internet facilities
- Failure to follow the School's sickness notification procedures and certification requirements
- Abuse of the sickness scheme e.g. engaging in activities which may delay recovery
- Actions during a period of sick leave likely to inhibit recovery or a return to health
- Being under the influence of alcohol or drugs
- Improper use of information obtained in the Council's and/or School's employment
- Abusive or inappropriate behaviour toward pupils, parents, fellow employees or members of the public

6.2 Actions that may be deemed to constitute gross misconduct and are likely to lead to dismissal without notice or pay in lieu of notice are listed below. The list is not exhaustive and is intended to give an indication of the nature and type of action which will warrant dismissal without notice or pay in lieu of notice. Sound judgement needs to be exercised, as it is not possible to give a complete list to cover every eventuality;

- Serious acts of insubordination
- Serious breaches of financial regulations or other operational regulations
- Gross negligence in the performance of duties
- Theft from the School, its employees or the public or other acts of dishonesty
- Dishonest or improper use of information obtained in the Council's and/or School's employment, e.g. disclosure of information pertaining to Council/School tender documents to outside contractors leading to unfair competition
- Serious breach of duty regarding non-disclosure of information
- Serious breach of duty regarding disclosure of confidential information
- Serious breach of safe working practices and health and safety rules which endangers the health and safety of the individual, other employees, or members of the public and/or exposes the Council/School to claims against it
- Serious breach or failure to provide safe working environment for children and young people
- Taking drugs on school premises for other than medical reasons
- Buying, selling or offering drugs on School premises
- Offering alcohol to students
- Fraud
- Falsification of information, e.g. qualifications or other relevant personal details in seeking and obtaining employment or promotion; information contained in time sheets, overtime claims, invoices, accounts, records or medical certificates
- Fighting
- Violent, offensive, abusive or indecent behaviour

- Bullying
- Unlawful acts of discrimination within the workplace on the grounds of race, sex, sexual orientation, age, disability, religious belief, trade union membership or any other protected characteristic.
- Harassment including discriminatory harassment, e.g. sexual harassment
- Unauthorised removal of and/or serious misuse of and/or deliberate damage to Council/School property and equipment including misuse of email, or internet facilities
- Serious breach of relevant School policies surrounding computer usage, internet access and electronic communications including Personal Blogs, Websites and Social Networking, e.g. incidents of bullying of colleagues or social media activity causing serious damage to the Council/School
- Sexual misconduct at work
- Other actions which fundamentally breach the relationship of trust and confidence which exists between employer and employee
- Conduct that is considered seriously contrary to the Code of Conduct for Officers
- Criminal offences and cautions outside of work, including reprimands, final warnings or penalty notices (dependent on the circumstances – seek HR advice)
- The making of covert recordings during any meetings without the knowledge and consent of all parties.
- Any action which brings or could bring the Council/School and/or its reputation into disrepute.
- Aiding and abetting any of the above

## **7. CASES OF ALLEGED CRIMINAL ACTIVITY**

7.1 If the case involves suspected criminal offences that may lead to police proceedings, there is no obligation to await the outcome of any criminal case before taking disciplinary action providing the allegations have been properly investigated and the Investigating Officer believes on the balance of probabilities that the employee committed the misconduct. In these cases it may be appropriate to seek advice from Police before undertaking an internal disciplinary process. However, in child protection cases, an internal investigation cannot commence until the police matter has been closed.

7.2 If the allegation involves suspected harm to children, young people or adults in a vulnerable situation, the guidance in Appendix 1 “Threshold document for

Harrow Designated Officer Referrals” must take precedence over this policy and procedure.

7.3 If the allegation involves suspected serious financial irregularity or fraud, the Director of Finance must be informed.

## 8. FORMAL STAGES OF THE DISCIPLINARY PROCEDURE AND DISCIPLINARY SANCTIONS

8.1 If informal action does not bring about the desired improvement, or the matter could constitute serious or gross misconduct, the formal procedure should be undertaken.

8.2 The formal stages of the Disciplinary procedure are based upon a graduated system of warnings with more serious sanctions being applied where poor conduct is repeated or the employee fails to heed previous warnings. The stages are listed below. The seriousness of the offence may result in stages in the process being missed out. An employee will not normally be dismissed for a first breach of discipline. For gross misconduct, however an employee may be dismissed without having had any prior formal warnings regarding their behaviour / conduct.

Stage 1 – First Written Warning	Remains on an employee’s file for 6 months.  Any further offence during the 6 month period will trigger a further formal meeting which could potentially result in further disciplinary action.
Stage 2 – Final Written Warning	Remains on an employee’s file for 12 months.  Final Written Warning is issued where the employee behaviour/conduct fails to improve in the 6 month timescale set out under the first warning, or where the misconduct is sufficiently serious to warrant a Final Warning.
Stage 3 – Dismissal	

8.3 Where the same type of misconduct becomes a pattern, which is repeated every time a warning ceases to be live, previous warnings may be taken into account and may result in gross misconduct, following a full disciplinary investigation.

The significance of the recurring issues needs to be taken into account when deciding if it should be treated as gross misconduct. Advice from HR must be sought.

- 8.4 In exceptional circumstances, the panel hearing the disciplinary, advised by HR, may decide that as an alternative to dismissal it is appropriate to offer demotion or transfer to an alternative post, if available.
- 8.5 Where the sanction is dismissal this may either be dismissal with notice or in cases of gross misconduct dismissal (summary dismissal) without notice or pay in lieu of notice.

## **9. SUSPENSION**

- 9.1 An employee may be suspended from duty on full pay at any time in any of the circumstances described below:
1. Where the School has reasonable grounds to suspect that the employee is guilty of gross misconduct and
  2. Where there is a real risk that the employee's continued presence at their place of work may interfere with a disciplinary investigation being undertaken or could be hindered by an employee's continued presence at work.
  3. Where suspension relates to a safeguarding allegation, the guidance in Appendix 1 "Threshold document for Harrow Designated Officer Referrals" must take precedence over this policy and procedure. Where concerns have been raised about risk of harm to a child, any member of staff about whom such concerns have been expressed must be removed from working with children with immediate effect.
- 9.2 Employees should be suspended in a meeting. Every effort should be made for this to be done in the presence of a Trade Union representative or work colleague, however, the suspension should not be delayed if this is not possible. Suspensions must be undertaken by the headteacher or governing body who have the designated responsibility.

9.3 Consideration must be given to alternative to suspensions and whether short-term relocation to another work area or temporary suspension from some duties is a feasible alternative. Whether to suspend or not will depend on the circumstances of the case and a suspension checklist must be completed. Advice must be sought from HR before a suspension is arranged. These alternatives will normally only be used in the short term, (not more than one week) and include:

- Permitting the employee to work from home
- Work at an alternative location or in an alternative role
- Work in a more closely supervised environment

9.4 Suspension is not a disciplinary measure however it clearly carries implications for the employee. Therefore, managers must be mindful of the dignity of the employee and the stress that suspension can cause when enacting a suspension. Failure to follow this procedure can result in additional stress and anxiety for the suspended employee.

Managers must be able to justify the reason for maintaining the suspension at any review.

When considering the suspension of an employee the school will:

- Conduct a preliminary assessment of the alleged facts of the case to ascertain whether allegations against the employee are serious enough to warrant suspension.
- Consider alternative measures to suspension, such as alternative duties, location or redeployment of transfer, to ensure that suspension is appropriate before making any decision to suspend.
- Consider whether it is necessary to immediately suspend access to equipment or resources used by the employee. This should only be considered necessary where there is a real likelihood that not doing so could prejudice any investigation. This decision will be made by the Headteacher or manager with delegated authority to suspend.

It is essential that suspension is kept to a **minimum and reviewed regularly**. The suspension will initially be reviewed by the Headteacher/ Nominated Officer after 15 working days and then on a 15-working day basis there onwards

9.5 During the period of suspension, unless otherwise informed, the employee is:

- Prohibited from attending their place of work other than for the purposes of attending investigatory interviews or attending a disciplinary hearing.
- Prohibited from contacting any pupil, parent, employee of the School or officer of the Council other than their representative or through the Investigating Officer. This does not prevent the employee from having social contact with their colleagues outside of the workplace, provided the disciplinary issues that are the cause of the suspension are not discussed.
- Prohibited from undertaking alternative employment with another employer.
- Required to co-operate with the disciplinary investigation including any request to provide or identify documents and attend meetings.
- Required to ensure that they are, and remain, contactable during normal working hours.

## 10. INVESTIGATIONS

10.1 In most cases an investigation will be required to establish whether or not there is a case for the employee to answer at a formal disciplinary hearing. Where an investigation takes place, the School will aim to conduct it promptly and without unnecessary delay, normally no later than 15 working days following the commissioning of the investigation. If, in exceptional circumstances, it is not possible to complete the investigation within 15 working days any extensions to timescales must be discussed and reasonably agreed by both parties.

*The nature, scale and duration of any disciplinary investigation will however, depend on the seriousness and complexity of the misconduct being investigated.*

10.2 Investigations relating to safeguarding allegations must be made with reference to Appendix 1 “Threshold document for Harrow Designated Officer Referrals”.

10.3 The School will normally continue with the Disciplinary process regardless of a resignation but each case will be considered on a case by case basis.

10.4 The person with responsibility for the investigation is the Investigating Officer.

The Investigating Officer will also undertake the role of Presenting Officer during the hearing. The function of the Investigating Officer is to:

- Ascertain the facts and circumstances surrounding the allegation or allegations of misconduct.
- Ascertain the employee's initial response to the allegation.
- Interview relevant parties.
- Compile a report containing a written summary of their findings.
- Form a view as to whether there is a case to answer at a formal disciplinary hearing.

## **11. NOTIFICATION TO ATTEND A DISCIPLINARY HEARING**

11.1 Where a formal disciplinary hearing is to take place, the employee will receive written notification from the Headteacher/Chair of Governors at least 5 working days in advance, of the requirement to attend a disciplinary hearing. The letter will advise the employee of the following:

- The location, date and time of the proposed disciplinary hearing.
- Details of the disciplinary allegations which the employee is to face.
- Whether dismissal is being contemplated as a sanction.
- Their right to be accompanied.
- Who will hear the case.
- The requirement for the employee to confirm in writing that they are attending, at least 2 working days before the disciplinary hearing, providing all relevant documentation and confirming the names of their employee representative.

11.2 The employee is under a duty to take all reasonable steps to attend the hearing. The disciplinary hearing may proceed in the employee's absence when all of the following conditions are met:

- The employee has either failed to attend one disciplinary hearing (or failed to respond to one previous notification to attend a disciplinary hearing).
- The employee is on notice that the disciplinary hearing may proceed in their absence.
- The employee has been informed of the opportunity to provide a written statement setting out their response to the allegations.

11.3 If the disciplinary hearing could potentially lead to dismissal the Council will also be informed and given the opportunity to attend, in accordance with the attached Schedule of Statutory Requirements relating to Dismissals at Appendix 2.

#### 11.4 Recording of meetings

A written record of all meetings conducted under this procedure will be taken. This will be done either by the person holding the meeting or by an additional person arranged to take notes. The employee, or any person acting on their behalf, are not normally permitted to record electronically any meeting that is held under this procedure. Any breach of this provision may lead to further disciplinary action.

In certain limited circumstances, we may permit a meeting to be recorded electronically, for example where it is a reasonable adjustment for an employee with a disability. Where we intend to record meetings held remotely, we will comply with our data protection obligations and obtain prior consent from all attendees.

## 12. **RIGHT TO BE ACCOMPANIED**

At any investigation meeting, disciplinary hearing or appeal hearing the employee has the right to be accompanied by a recognised trade union representative or a work colleague.

### **13. GRIEVANCES DURING THE COURSE OF THE DISCIPLINARY PROCESS**

13.1 Where, during the course of the disciplinary process the employee raises a grievance about any aspect of the disciplinary process, (e.g. the fact the employee has been suspended, that disciplinary action is being taken against them, the procedure being applied, or any of the individuals involved in the disciplinary process), the employee's grievance will be dealt with as part of the disciplinary hearing and will not be treated as a separate grievance under the school's grievance procedure.

### **14. DISCIPLINARY HEARINGS**

14.1 The disciplinary hearing will be chaired by the Headteacher/Governing Body for alleged misconduct. If dismissal is a possible outcome, the Disciplinary Panel will comprise three Governors. The employee will be given the opportunity to outline their case in response to the allegations. Refer to section 14 of the Schools' Discipline Toolkit for Managers for guidance on the format of the hearing.

14.2 It is the School's policy not to allow electronic recordings of disciplinary or appeal hearings.

14.3 The Governing body/Headteacher is required to notify the Council in any case where dismissal is a possible outcome and the Council has the right to be represented at a dismissal hearing.

14.4 The hearing bundle and notice of the hearing must be provided to the employee at least 5 working days before the hearing.

### **15. CONFIRMATION OF THE OUTCOME OF THE DISCIPLINARY HEARING**

15.1 Whether or not the employee has been informed of the outcome of the disciplinary hearing orally at its conclusion, the employee will be notified of the outcome of the disciplinary hearing in writing. Written notification will normally be within 5 working days of the date of the hearing and will include:

- The reasons for upholding any allegation of misconduct.

- The details of any disciplinary sanction applied.
- If the disciplinary sanction is a warning, the nature and type of the warning and the date of its expiry.
- A warning as to the consequence of further offences of a similar or different nature.
- Any specific requirements for future conduct.
- Any specific requirements in respect of training and development to be undertaken.
- If the disciplinary sanction is dismissal, the reason(s) for dismissal.
- Any right of Appeal, giving the name of the person to whom the appeal should be addressed.

15.2 If the disciplinary sanction is dismissal, the Director of Education Services and Director of Children Services will also be informed in writing, at the same time as the employee, (i.e. copied into the dismissal letter) in accordance with the attached Schedule of Statutory Requirements relating to Dismissals (Appendix 2).

15.3 Where employees of community schools are dismissed by the school, a letter will be sent from the Director of Children Services confirming that the employee is also dismissed from the Council.

## **16. RIGHT OF APPEAL**

16.1 An employee may appeal against a decision to issue them with any formal disciplinary sanction, i.e. first written warning, final written warning or dismissal.

16.2 An employee seeking to appeal must do so within 10 working days of the date of receipt of the letter confirming the decision. The employee should complete Disciplinary Appeal Form outlining their grounds of appeal to the named person, as detailed in the letter confirming the outcome of the hearing.

16.3 Once an appeal has been received in writing, an appeal hearing will normally be convened promptly, allowing at least 5 working days written notice of the hearing.

16.4 The hearing bundle and notice of the hearing must be provided to the employee at least 5 working days before the hearing.

16.5 An Appeals Panel, comprising three Governors will consider an appeal against a first or final warning and an appeal against a decision to dismiss.

16.6 The role of the appeal panel shall be to conduct either a review of the disciplinary sanction or a re-hearing, depending on the grounds of the Appeal.

## 17. FURTHER GUIDANCE

17.1 Further guidance is contained in the relevant documents listed below, for all parties involved during the Disciplinary process:

- Disciplinary Toolkit
- Threshold document for Harrow Designated Officer referrals

17.2 These documents will be updated on a regular basis. Headteachers should refer to the most up to date copy on HR4Schools [www.harrow.gov.uk/hr4schools](http://www.harrow.gov.uk/hr4schools) and not a previous printed version. Formal advice and guidance is available from HR.

## **THRESHOLD DOCUMENT FOR HARROW DESIGNATED OFFICER REFERRALS**

### **Purpose of this document**

- To assist Managers of organisations where professionals are employed in a position of power, trust and authority over children aged 0-18 years.
- To interpret the current law and guidance and help ensure that all complaints and allegations against staff, where there is a child welfare concern, are dealt with appropriately. In particular, this guidance seeks to help differentiate between those allegations and concerns that require referral to Children's Services/MASH and/or Police, and those more properly dealt with through standard complaint or disciplinary procedures.

### **General principles**

The welfare principle 'The Welfare of the Child is Paramount... Children Act 1989 S1 (1)' must be upheld in all cases. The child must be listened to and any concerns taken seriously. Head Teachers/Managers also have a continuing duty of care to any member of staff who becomes the subject of an allegation. They should ensure that staff in this position are treated fairly and offered appropriate professional support.

### **Definitions**

The relevant legislation and guidance, such as the Children Act 1989 and 'Working Together to Safeguard Children' (DOH, et al, 1999), provide a number of the definitions that are used to describe child abuse in its different forms. These include the four categories of abuse i.e. physical, sexual, emotional and neglect; the definition of harm, health, development and ill treatment and also significant harm.

### **Context**

Where it is decided that a child protection or disciplinary investigation should take place, the context in which an incident is alleged to have occurred, may provide important information for those conducting the investigation. The collation of such information however, should not delay a child protection referral being made, nor jeopardise any subsequent investigation.

Where previous allegations have been made, serious caution must be applied. This may indicate an ongoing concern about that particular child or member of staff that needs to be addressed.

### **Examples of actions that may be interpreted as abusive**

Ill-treatment is an implicit element in all forms of abuse. It provides a measure, within the context of significant harm and alleged crime, for establishing a threshold for referral. Ill-treatment by a professional might include:

## **Physical Abuse**

- Any form of physical assault (including attempts) e.g.:
- Punching
- Kicking
- Pushing
- Smacking
- Slapping
- Shaking
- Throwing a missile at a pupil (e.g. chalk, board rubber etc.)

## **Sexual Abuse**

- Any form of sexual assault (includes attempts)
- Abuse of a position of trust
- Possession of indecent and pseudo indecent photographs of children (includes computer images)
- Showing indecent or pornographic material to children
- Inappropriate touching, language, or behaviour toward any child or pupil for sexual purposes
- Inappropriate use of text messaging, e-mail or other IT toward any child or pupil for sexual purposes

## **Emotional Abuse and Neglect**

- Racial comments or behaviour, or failing to address these in others
- Homophobic comments or behaviour, or failing to address these in others
- Bullying pupils, or failing to address this in others
- Persistent sarcasm
- Belittling pupils e.g. persistently placing a child in a corner or corridor
- Creating a climate of fear in the classroom
- Damaging a pupil's self esteem through persistent lack of warmth and positive regard
- Inappropriate punishment e.g. placing a child in a cupboard
- Failing to protect a child from physical harm or danger (e.g. school trips)
- Failing to ensure access to appropriate medical care or treatment (e.g. where a pupil sustains an injury)

The above examples are not exhaustive and only serve as a guide. Many of these behaviours do constitute a criminal offence some do not and some may not reach a threshold of significant harm, but they all constitute professional misconduct.

## **Examples of actions that are non-abusive**

- Applying restraint consistent with legislation and guidance
- Removing, with reasonable force, potentially dangerous items from a pupil's

- possession, or a pupil from a dangerous location
- Shepherding pupils (e.g. hand on back/shoulder)
- Comforting (e.g. hand on arm/shoulder/back)
- Securing attention by tapping pupil's shoulder

Staff should be aware, however, that any physical contact with pupils could be open to misinterpretation. Perceptions and language can present very different views of the same incident. Tapping a child could be interpreted as an assault, particularly where there has been earlier disagreement between the child and the member of staff concerned. Some methods of comforting a child could be viewed as an unwanted sexual advance. Other than circumstances which are in accordance with an agreed physical intervention policy, physical contact should be age appropriate, with the child's permission, and limited to the needs of the child at the time.

### **Examples of actions that are both abusive and non-abusive**

The following are examples of actions, albeit not overtly abusive, that could be interpreted as a member of staff 'grooming' a child for sexual purposes:

- Inviting pupils to their homes
- Giving pupils gifts
- Offering pupils lifts outside normal duties
- Singling individual pupils out for special attention
- Seeing pupils socially

The frequency, nature and degree etc. of such behaviour may justify the need for further investigation under child protection or discipline procedures.

### **Thresholds for referral**

#### **Significant Harm**

Where a complaint or allegation has been made against a member of staff and the child is considered to be suffering or is likely to suffer significant harm a referral must be made to Children's Services/MASH

The definition of significant harm is not prescriptive. Its interpretation will depend largely on professional judgement, based on the known facts. It can include inappropriate touching, an assault, or a series of compounding events e.g. bullying.

Other factors to be considered include the age and vulnerability of the child, the degree of force used, the frequency of the harm, the nature of the harm in terms of ill treatment and the impact on the child's health and development.

In simple terms, if the harm or risk of harm attributable to a member of staff falls within the category of either physical, sexual or emotional abuse or neglect, a referral should be made to Children's Services/MASH. It is important that advice is sought where there is any doubt as to whether the threshold of significant harm has been reached.

'Working Together' states 'Often, it is only when information from a number of

sources has been shared and is then put together that it becomes clear that a child is at risk of or is suffering harm'. Whilst in some cases the threshold for significant harm may not be met, the concern can still be addressed through internal investigation and if appropriate, disciplinary or competency routes.

### **Criminal Offence**

Complaints against staff may constitute an allegation of a criminal offence, e.g. complaints about excessive force used in restraint incidents and the use of force to maintain discipline, may contain the elements that could give rise to an allegation of assault

Where a complaint or allegation against a member of staff indicates that a criminal offence has been committed or is suspected of having been committed, a referral should be made to Children's Services/MASH and/or Police. It is not necessary to consider whether the threshold of significant harm has been reached.

**It is important for advice to be sought if there is any doubt.**

### **Process**

#### **Initial Action:**

When an allegation is received it is important to be clear about what is being said. It must be noted, however, that the Head teacher/Manager should not investigate the incident by interviewing either those directly involved or any witnesses. Interviews undertaken by untrained staff are likely to jeopardise any subsequent criminal/discipline investigation and may lead to unjust outcomes for the child or the accused member of staff.

The Head Teacher/Manager should simply establish:

- That an allegation has been made
- The general nature of the allegation
- When and where the incident is alleged to have occurred
- Who was involved?
- Any other persons present

**“Working Together” provides clear definitions of the four categories of abuse:**

- **Physical Abuse** - May involve hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocating, or otherwise causing physical harm to a child.
- **Emotional Abuse** - The persistent emotional ill treatment of a child such as to cause severe and persistent adverse effects on the child's emotional development.
- **Sexual Abuse** - Involves forcing or enticing a child or young person to take part in sexual activities, whether or not the child is aware of what is happening. The activities may involve physical contact, including penetrative or non penetrative acts.
- **Neglect** - The persistent failure to meet a child's basic physical and psychological

needs, likely to result in the serious impairment of the child’s health or development.

**ALLEGATIONS AGAINST STAFF**

**THRESHOLD FOR CHILD PROTECTION**

**REFERRAL**

<b>CATEGORY</b>	<b>DEFINITION</b>	<b>EXAMPLES</b>	<b>ACTION</b>	<b>SAFEGUARDS</b>
Apparent Corroboration	Where an allegation or concern is accompanied by actual or circumstantial evidence.	A child may have a visible injury. The incident may have been witnessed. The member of staff may behave in a way that is consistent with the allegation.	A Child Protection referral must be made to MASH or the Police.  A referral must be made to the Designated Officer (LADO)	The referral to MASH must be followed in writing.  Consideration to suspension of the member of staff- Consultation with HR and LADO

<b>CATEGORY</b>	<b>DEFINITION</b>	<b>EXAMPLES</b>	<b>ACTION</b>	<b>SAFEGUARDS</b>
Possible	Where there are indications that an abusive incident might have taken place, or little evidence to disprove a child’s allegations.	Where a child’s allegations might be supported by other information, or where it is a matter of one word against another.	A referral must be made to MASH  The LADO – Designated Officer will receive a referral	The referral to MASH must be followed in writing.  Consideration to suspension of the member of staff- Consultation with HR and LADO

<b>CATEGORY</b>	<b>DEFINITION</b>	<b>EXAMPLES</b>	<b>ACTION</b>	<b>SAFEGUARDS</b>
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Unlikely	The alleged incident most probably did not take place.	Where circumstantial evidence appears incompatible with the allegation.	Only clarification of the specific allegation or concern should be sought. No attempt should be made to investigate the	The school's knowledge of both the child and member of staff concerned will be invaluable.
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			<p>matter at this stage.</p> <p>Consultation with LADO to be held.</p>	<p>However, the LADO's view will contribute further objectivity and help to secure consistency and appropriateness of response.</p>
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CATEGORY	DEFINITION	EXAMPLES	ACTION	SAFEGUARDS
Demonstrably false	It is known without a doubt that an allegation is untrue. This position requires strong evidence and must not be based on preconceptions about the child or member of staff concerned.	The alleged perpetrator was known not to be anywhere in the vicinity and the child is not confused in terms of time, place or person.	Internal enquiries can be undertaken by the school. The child's motives or misunderstandings should be addressed— involving those with parental responsibility.  If there is any doubt the advice from the LADO should be sought.	A written record of the allegation and the outcome of any investigation needs to be recorded and kept by the organisation.  This allows for external monitoring and further intervention if appropriate.  Consideration should always be given to the possibility that the child may be displacing abuse experienced elsewhere.

Adapted from Guidance Produced by: The National Network of Investigation & Referral Support Co-ordinators. J. Miller July 2016.

## APPENDIX 2

### SCHEDULE OF STATUTORY REQUIREMENTS

#### BASED ON SCHOOL STAFFING REGULATIONS (ENGLAND) 2009

#### 1. POTENTIAL DISMISSALS

Type of School	Legal Employer	Right to attend hearing where dismissal is potential outcome	Letter confirming dismissal to be written by
Community	Local Authority	Local Authority must attend hearing*	Local Authority**
Local Authority Maintained Nursery	Local Authority	As above*	As above**
Voluntary Aided	Governing Body	As above*	As above**

\* Where any Discipline hearing is convened that could potentially lead to dismissal, the Local Authority (HR Team) must be informed and given the opportunity to attend. The Local Authority representative in attendance will give advice that must be listened to and given full consideration by the Disciplinary Panel.

\*\* The Chair, assisted by HR, will write to the employee and the Local Authority, at the same time, to confirm the outcome of the hearing. Where the decision is to dismiss, the Local Authority, when required or requested to do so, will write the formal dismissal letter within 14 days of the instruction from the school. The Local Authority is required to notify the Secretary of State for Education whenever an employee in a school is dismissed on grounds of misconduct, or resigns in circumstances, which would have led to their dismissal, or consideration of their dismissal, on those grounds, if they had not resigned. The Secretary of State/Disclosure and Barring Service are able to bar a person from employment as a teacher and/or from any work involving regular contact with children, to place restrictions on such employment, to suspend a person from teaching for up to 2 years (with or without conditions), to issue a reprimand or to issue a warning about future conduct.

Governing Bodies are free to choose whether or not to collaborate/work jointly with Governing Bodies of other schools, in their arrangements for dismissal.

## 2. HEADTEACHER'S PERFORMANCE

The Local Authority has a duty to make a written report to the Chair of Governors if it has a serious concern about the performance of the Headteacher.

## 3. SUSPENSION

Both the Governing Body and the Headteacher have the power to suspend employees at the school but only the Governing Body can lift the suspension.

Type of School	Suspension imposed or lifted by Chairman of Governors, acting on behalf of Governing Body	Suspension imposed by Headteacher
Community	Must immediately inform the Headteacher and the Director Education Services (or representative)	Must immediately inform the Chairman of Governors and the Director Education Services (or representative)
Voluntary Controlled	As above	As above
Local Authority Maintained Nursery	As above	As above
Voluntary Aided	Recommended to inform the Director Education Services (or representative)	Recommended to inform the Director Education Services (or representative)