

Halstead CP School

Allegations of Abuse Against Staff Policy



Reviewed and approved by the Full Governing Body

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Signed :

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1 **Introduction: The responsibility to safeguard children and young people**

Safeguarding children is everybody's responsibility. All employers have a responsibility to set personal and professional boundaries for their staff and to be explicit about what behaviour is unacceptable and will impact on their employment.

2 **Reporting a concern**

When a complaint of abuse is made against an employee on behalf of a child there should be immediate consideration of whether a child or children is/are at risk of significant harm and in need of protection.

Any employee who becomes aware of a possible allegation or concern of a child protection nature must take immediate steps to ensure the matter is reported to the Head Teacher, who is the school's Designated Child Protection Co-ordinator (DCPC). In cases where the allegation is about a Head Teacher who is also the DCPC (as in many primary schools), the matter should be reported to the Chair of Governors.

As part of the basic information-gathering process, the Head Teacher will have an immediate preliminary consultation about the allegation or concern with the Area Children's Officer (Safeguarding) who will advise on further action in accordance with this procedure, if appropriate. This consultation must take place prior to any form of investigation being undertaken by the school or service. This is not the beginning of an investigation. This advice will include who, if anyone should be made aware that an allegation or concern has been raised.

Any allegation against an employee should lead to careful consideration of the possibility of abuse and of a referral being made of any concerns to the statutory agencies if it is considered that the threshold of significant harm has been reached and a person who works with children has:

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

It is the responsibility of the Governing Body and the Head Teacher to ensure that all employees are aware of their responsibility to report any allegation or possible concern of a child protection nature.

The Headteacher or any other employee or governor to whom an allegation has been reported, is not expected to investigate the allegation, or interview pupils, but to assess, after consultation with the Area Children's Officer (Safeguarding) how the matter will proceed. Confidentiality must be maintained throughout this stage

A child who reports that he/she may have been abused by an employee of the school/service, must be carefully listened to in all circumstances. 'Listened to' means just that; on no account should suggestions be made to a child as to alternative explanations for his/her worries; neither should any member of staff attempt to

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question the child as part of any investigation, as this could lead to primary evidence for any future prosecution being compromised.

There will be three possible types of investigation:

- By Social Services and the Police under Section 47 of the Children Act 1989
- By the Police under criminal law, and:
- By the school/LA in line with staff disciplinary procedures.

Any disciplinary process should be clearly separated from the child protection or criminal investigations. The disciplinary process may be informed by these other investigations and in some circumstances the child protection agencies might decide to make a **recommendation** about suspension or other protective action as a result of a strategy discussion. The child protection or criminal investigation has different objectives from the disciplinary procedure and the two processes should not be confused.

Under no circumstances should the school initiate an internal management investigation into an allegation against a member of staff until a consultation has taken place with the LA's Children's Safeguards Team or Social Services directly.

The school or service has a statutory duty to comply with Child Protection Procedures and this will include ensuring that all staff are familiar with the process and understand their responsibilities to report a concern. **When in doubt – consult.**

3 **Exercising professional judgement**

Throughout the process for managing allegations or concerns, the Head Teacher will need to exercise his/her professional judgement. Making such judgements about someone's behaviour is a difficult and complex process. It is important therefore that they:

- consult appropriately
- acknowledge any lack of expertise or information
- keep an open mind until a conclusion is reached
- consider other options or alternatives
- know and act in accordance with the law
- know and apply appropriate procedures
- consider appropriate guidance
- take account of all relevant factors
- give each factor appropriate weight
- apply the duty of care

4 **Confidentiality and information-sharing**

Information sharing is vital to safeguarding and promoting the welfare of children and young people.

Disclosure of any confidential information should always be appropriate for the purpose and only to the extent necessary to achieve that purpose.

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5 Record-keeping

Record keeping is an integral part of the management of allegations. The minimum amount of information which should initially be recorded is summarised in **Appendix A**.

It is important that employers keep a clear, accurate, and comprehensive summary of any allegations made, details of how the allegations were followed up and resolved and of any action taken and decisions reached. These should be kept in a person's confidential personnel file and a copy should be given to the individual. Such information should be retained on file, including for people who leave the organisation, at least until the person reaches normal retirement age, or for 10 years if that is longer.

6 Suspension

The suspension of an employee, particularly in situations of potential child protection allegations will have a significant impact on the individual and therefore it is essential that the facts of the case, as they are known and alternative courses of action are carefully considered in deciding whether to suspend. The specific arrangements for the suspension of staff are set out in the school's/KCC disciplinary procedure (reference document: Discipline at Work 2006), but it should be recognised that suspension is a neutral act to protect the interests of both parties and not an assumption of guilt. It is also essential that the Disciplinary Procedures are followed in terms of providing appropriate support to the individual throughout the period of suspension. See appendix "Use of Reasonable Force"

The decision to suspend is taken by the Head Teacher and/or the Governing Body and not by the Police or Social Services

Being suspended or asked to refrain from work can give rise to great anxiety in the individual subject to the allegations. They may fear that colleagues and others within the school/community will have interpreted the very act of suspension as an indicator of presumed guilt from an early stage, and may feel particularly isolated and vulnerable.

The need for support is equally applicable when considering a staff member's return to work. Suspension should be retained for as short a length of time as possible and if it is agreed a staff member is to return to school/work, careful planning needs to take place as to how this situation can be managed as sensitively as possible

In some cases early or immediate suspension may impede a Police investigation, and therefore the decision whether to suspend may have to be delayed until sufficient evidence has been gathered. Suspension should be avoided in such cases wherever possible, and should not be seen as an automatic response to an allegation. This applies to the possible suspension of head teachers as well as other staff. Suspension should only follow after discussion with the lead officer. The decision to suspend remains the responsibility of the Headteacher and governing body (for schools) and the relevant Director (LA staff).

When considering suspension it is important to have regard to the following factors:

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- The nature of the allegation
- Assessment of the presenting risk
- The context in which the allegation occurred
- The individual's contact with children
- Any other relevant information
- The power to suspend
- Alternatives to suspension

Suspension should only be applied if one or more of the following grounds apply:

- A child or children would be at risk
- The allegation is so serious that summary dismissal for gross misconduct is possible
- It is necessary to allow any investigation to continue unimpeded

7 Alternatives to suspension

While weighing the factors as to whether suspension is necessary, available alternatives to suspension should be considered. This may be achieved by:

- Leave of absence
- Undertaking different duties which do not involve direct contact with the individual child or other children
- Providing a classroom assistant or other colleague to be present throughout contact time.

If the member of staff is not based in a school then an alternative may be to:

- Undertake office duty
- Undertake non-contact tasks only

8 Time-scales

Appendix 5 of 'Working Together to Safeguard Children' (2010) lays down indicative time-scales within which the process should be concluded. It is recognised that these will present a challenge to all professionals but it is recommended that every effort should be made to comply with the following:

- 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**.
- Where further investigation is required to inform consideration of disciplinary action, the Headteacher and Schools Personnel Adviser should discuss who will undertake the investigation. In such cases, once nominated, the investigating officer should aim to provide a report to the employer within **10 working days**.

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- The decision on whether a disciplinary hearing is needed should be made within **2 working days** of the employer receiving the report.
- A disciplinary hearing should then be convened within **15 working days**.

9 Support and Aftercare

The Children Act 2004 established the principle that the interests of the child are paramount. This, however, must be considered alongside the duty of care to staff. Any individual subject to allegations should, regardless of the decision to suspend or otherwise, be offered welfare support. Where possible, a means of monitoring the take up and effectiveness of welfare support without compromising confidentiality or trust should be sought. Where suspension is being considered, the duty of care requires the Head Teacher to ensure that appropriate support is available to the member of staff. In the case of an allegation against the Head Teacher, this responsibility lies with the Chair of Governors (or nominated Chair). Agreement must be reached with education personnel (and police where appropriate) as to how information will be shared and contact maintained with the member of staff throughout the investigative process. This should include agreement as to:

- How the member of staff will be kept updated about the progress of the investigation,
- How support and counselling are to be offered: and
- How links will be maintained with the school so that the staff member is kept informed of other matters occurring within the school.

It is important for employers to take into account the emotional effects that allegation investigations can sometime bring to a workplace (regardless of the outcome, or whether staff are involved or not) and for those organisations that do not have good aftercare to consider that staff may have unresolved feelings and will need support.

10 Duty to supply information

If after investigation, the employer has ceased to use a person's services for reasons of misconduct or because they consider that person to be unsuitable to work with children, there is a **statutory duty** on the employer to supply information to the appropriate authority. This is regardless of whether the evidence is such that the employer feels that the case is likely or unlikely to result in the individual being barred from working with children

The organisation is similarly required to supply information about the disciplinary process if the person resigns (or withdraws their voluntary services) before the process has been completed. It will therefore be necessary, in those cases, for the disciplinary investigation to continue

There are currently two children's barring lists: List 99 and the Protection of Children Act (PoCA) list.

List 99 contains the names and personal details of education staff and others who are barred or restricted from providing education or carrying out work, including

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voluntary work, that involves regular contact with children under the age of 18 in or for a school, a local authority or a further education institution.

Education Staff	}	List 99
School Transport roles (taxi, bus driver)		
Private Tutors		
Governors		
Volunteers		
Agency Staff/Supply teachers		

APPENDIX A

Minimum information to be recorded.

Head Teacher / Chair of Governors	
1.	Staff Member or Volunteer <ul style="list-style-type: none">▪ Name▪ Date of Birth▪ Address▪ Title of Job▪ Employment Status▪ Any previous concerns
2.	Allegation or Concern <ul style="list-style-type: none">▪ Nature▪ Date▪ Time▪ Location▪ Details of witnesses
3.	Child or Young Person <ul style="list-style-type: none">▪ Name▪ Date of Birth▪ Gender
4.	Details of colleagues consulted <ul style="list-style-type: none">▪ LADO▪ Human Resources
5.	Decisions and action taken/to be taken
6.	Information provided to adult subject of the concern
7.	Date
8.	Signature

APPENDIX B

Definitions

Adults

References to 'adults' or 'volunteers' refer to any adult who is employed, commissioned or contracted to work with or on behalf of, children and young people, in either a paid or unpaid capacity.

Allegation

Information which comes to light which suggests an employee, volunteer or contractor may have hurt or harmed a child, committed a criminal offence against a child or has behaved in such a way towards a child or young person that they may be considered as unsuitable to continue in their current employment or in any capacity which involves working with children.

Children and Young People

Throughout this document references are made to "children and young people". These terms are interchangeable and refer to children who have not yet reached their 18th birthday.

Concern

Behaviour which is of concern to a manager or employer, identified through the normal employer/employee relationship.

Duty of Care

The duty which rests upon an individual or organisation to ensure that all reasonable steps are taken to ensure the safety of a child or young person involved in any activity or interaction for which that individual or organisation is responsible. Any person in charge of, or working with children and young people in any capacity is considered, both legally and morally, to owe them a duty of care.

Employer

The term 'employer' refers to the organisation which employs, or contracts to use the services of individuals in pursuit of the goals of that organisation. In the context of this document, the term 'employer' is also taken to include 'employing' the unpaid services of volunteers.

Malicious

The term 'malicious' implies that an allegation, either wholly or in part, has been made with a deliberate intent to deceive or cause harm to the person subject to the allegation. For an allegation to be classified as malicious, it will be necessary to have evidence to prove the intention to cause harm. Care should be taken in dealing with such allegations as some facts may not be wholly untrue. Some parts of an allegation may have been fabricated or exaggerated but elements may be based on truth.

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Manager

The term 'manager' refers to those adults who have responsibility for managing services including the supervision of employees and/or volunteers at any level.

Safeguarding

Process of protecting children from abuse or neglect, preventing impairment of their health and development, and ensuring they are growing up in circumstances consistent with the provision of safe and effective care that enables children to have optimum life chances and enter adulthood successfully¹.

Unfounded

The term 'unfounded' means that there is no evidence or proper basis which supports the allegation being made, or there is evidence to prove that the allegation is untrue. There is the possibility that the allegation may be malicious (see below), but it might also indicate that the person making the allegation had misinterpreted the incident or was mistaken about what he/she saw, or was not aware of all the circumstances

Unsubstantiated

An unsubstantiated allegation means that there is insufficient identifiable evidence to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.

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¹ *Working Together* (2006)

APPENDIX - USE OF REASONABLE FORCE
GUIDANCE FOR SCHOOL LEADERS, STAFF AND GOVERNING BODIES

ABOUT THIS GUIDANCE

- (i) This is non-statutory guidance from the Department for Education. It is intended to provide clarification on the use of force to help school staff feel more confident about using this power when they feel it is necessary and to make clear the responsibilities of school leaders and governing bodies in respect of this power.
- (ii) This advice replaces “The use of force to control and restrain pupils – Guidance for schools in England”.

EXPIRY/REVIEW DATE

This guidance will be reviewed when the consultation has closed.

WHAT LEGISLATION DOES THIS GUIDANCE RELATE TO?

Education and Inspections Act 2006.

WHO IS THIS GUIDANCE FOR?

This advice is aimed at governing bodies, head teachers and school staff in all schools.

KEY POINTS

- (i) School staff have a legal power to use force and lawful use of the power will provide a defence to any related criminal prosecution or other legal action.
- (ii) Suspension should not be an automatic response when a member of staff has been accused of using excessive force.
- (iii) Senior school leaders should support their staff when they use this power.

1 What is reasonable force?

- (i) The term ‘reasonable force’ covers the broad range of actions used by most teachers at some point in their career that involve a degree of physical contact with pupils.

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- (ii) Force is usually used either to control or restrain. This can range from guiding a pupil to safety by the arm through to more extreme circumstances such as breaking up a fight or where a student needs to be restrained to prevent violence or injury.
- (iii) 'Reasonable in the circumstances' means using no more force than is needed.
- (iv) As mentioned above, schools generally use force to control pupils and to restrain them. Control means either passive physical contact, such as standing between pupils or blocking a pupil's path, or active physical contact such as leading a pupil by the arm out of a classroom.
- (v) Restraint means to hold back physically or to bring a pupil under control. It is typically used in more extreme circumstances, for example when two pupils are fighting and refuse to separate without physical intervention.
- (vi) School staff should always try to avoid acting in a way that might cause injury, but in extreme cases it may not always be possible to avoid injuring the pupil.

2 Who can use reasonable force?

- (i) All members of school staff have a legal power to use reasonable force².
- (ii) This power applies to any member of staff at the school. It can also apply to people whom the head teacher has temporarily put in charge of pupils such as unpaid volunteers or parents accompanying students on a school organised visit.

3 When can reasonable force be used?

- (i) Reasonable force can be used to prevent pupils from hurting themselves or others, from damaging property, or from causing disorder.
- (ii) In a school, force is used for two main purposes – to control pupils or to restrain them.
- (iii) The decision on whether or not to physically intervene is down to the professional judgement of the staff member concerned and should always depend on the individual circumstances.
- (iv) The following list is not exhaustive but provides some examples of situations where reasonable force can and cannot be used.

Schools can use reasonable force to:

- remove disruptive children from the classroom where they have refused to follow an instruction to do so;
- prevent a pupil behaving in a way that disrupts a school event or a school trip or visit;

² Section 93, Education and Inspections Act 2006

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- prevent a pupil leaving the classroom where allowing the pupil to leave would risk their safety or lead to behaviour that disrupts the behaviour of others; and
- prevent a pupil from attacking a member of staff or another pupil, or to stop a fight in the playground.

Schools cannot:

- use force as a punishment – **it is always unlawful to use force as a punishment.**

4 Communicating the school's approach to the use of force

- (i) Every school is required by law to have a behaviour policy and to make this policy known to staff, parents and pupils. The governing body should notify the head teacher that it expects the school behaviour policy to include the power to use reasonable force.
- (ii) There is no legal requirement to have a policy on the use of force but it is good practice to set out, in the behaviour policy, the circumstances in which force might be used. For example, it could say that teachers will physically separate pupils found fighting or that if a pupil refuses to leave a room when instructed to do so, they will be physically removed.
- (iii) Schools do not require parental consent to use force on a student.
- (iv) Schools should **not** have a 'no contact' policy. There is a real risk that such a policy might place a member of staff in breach of their duty of care towards a pupil, or prevent them taking action needed to prevent a pupil causing harm.
- (v) By taking steps to ensure that staff, pupils and parents are clear about when force might be used, the school will reduce the likelihood of complaints being made when force has been used properly.

5 Using force

A panel of experts³ identified that certain restraint techniques presented an **unacceptable risk** when used on children and young people. The techniques in question are:

- the 'seated double embrace' which involves two members of staff forcing a person into a sitting position and leaning them forward, while a third monitors breathing;
- the 'double basket-hold' which involves holding a person's arms across their chest; and
- the 'nose distraction technique' which involves a sharp upward jab under the

³ Physical Control in Care Medical Panel - 2008

nose.

6 Staff training

Schools need to take their own decisions about which staff will require training in the use of force, and what that training should be. Some local authorities provide advice and guidance to help schools to develop an appropriate training programme.

7 Telling parents when force has been used on their child

It is good practice for schools to speak to parents about serious incidents involving the use of force and to consider how best to record such serious incidents. It is up to schools to decide whether it is appropriate to report the use of force to parents.

In deciding what is a serious incident, teachers should use their professional judgement and also consider the following:

- The pupil's behaviour and level of risk presented at the time of the incident
- The degree of force used
- The effect on the pupil or member of staff
- The child's age

8 What happens if a pupil complains when force is used on them?

- (i) All complaints about the use of force should be thoroughly, speedily and appropriately investigated.
- (ii) Where a member of staff has acted within the law – that is, they have used reasonable force in order to prevent injury, damage to property or disorder – this will provide a defence to any criminal prosecution or other civil or public law action.
- (iii) When a complaint is made the onus is on the person making the complaint to prove that his/her allegations are true – it is **not** for the member of staff to show that he/she has acted reasonably.

Suspension must not be an automatic response when a member of staff has been accused of using excessive force. Schools should refer to the “Dealing with Allegations of Abuse against Teachers and Other Staff” guidance where an allegation of using excessive force is made against a teacher. This guidance makes clear that a person must not be suspended automatically, or without careful thought.

- (iv) Schools must consider carefully whether the circumstances of the case warrant a person being suspended until the allegation is resolved or whether alternative arrangements are more appropriate.
- (v) If a decision is taken to suspend a teacher, the school should ensure that the teacher has access to a named contact who can provide support.
- (vi) Governing bodies should always consider whether a teacher has acted within the law when reaching a decision on whether or not to take disciplinary action against the teacher.

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- (vii) As employers, schools and local authorities have a duty of care towards their employees. It is important that schools provide appropriate pastoral care to any member of staff who is subject to a formal allegation following a use of force incident.

9 What about other physical contact with pupils?

- (i) It is not illegal to touch a pupil. There are occasions when physical contact, other than reasonable force, with a pupil is proper and necessary.
- (ii) Examples of where touching a pupil might be proper or necessary:
 - a. Holding the hand of the child at the front/back of the line when going to assembly or when walking together around the school;
 - b. When comforting a distressed pupil;
 - c. When a pupil is being congratulated or praised;
 - d. To demonstrate how to use a musical instrument;
 - e. To demonstrate exercises or techniques during PE lessons or sports coaching; and
 - f. To give first aid.

Frequently Asked Questions

Q. I'm worried that if I use force a pupil or parent could make a complaint against me. Am I protected?

A. Yes, if you have acted lawfully. If the force used is reasonable all staff will have a robust defence against any accusations.

Q. How do I know whether using a physical intervention is 'reasonable'?

A. The decision on whether to physically intervene is down to the professional judgement of the teacher concerned. Whether the force used is reasonable will always depend on the particular circumstances of the case. The use of force is reasonable if it is proportionate to the consequences it is intended to prevent. This means the degree of force used should be no more than is needed to achieve the desired result. School staff should expect the full backing of their senior leadership team when they have used force.

Q. What about school trips?

A. The power may be used where the member of staff is lawfully in charge of the pupils, and this includes while on school trips.

Q. Can force be used on pupils with SEN or disabilities?

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A. Yes, but the judgement on whether to use force should not only depend on the circumstances of the case but also on information about the pupil concerned.

Q. I'm a female teacher with a Year 6 class - there's no way I'd want to restrain or try to control my pupils. Am I expected to do so?

A. There is a power, not a duty, to use force so members of staff have discretion whether or not to use it. However, teachers and other school staff have a duty of care towards their pupils and it might be argued that failing to take action (including a failure to use reasonable force) may in some circumstances breach that duty.

Q. Are there any circumstances in which a teacher can use physical force to punish a pupil?

A. No. It is always unlawful to use force as a punishment. This is because it would fall within the definition of corporal punishment, which is illegal.

ASSOCIATED RESOURCES

Guidance on the Use of Restrictive Physical Interventions for Staff Working with Children and Adults who display Extreme Behaviour in Association with Learning Disability and/or Autistic Spectrum Disorders (2002)

Guidance on the Use of Restrictive Physical Interventions for Pupils with Severe Behavioural Difficulties (2003)

<http://www.education.gov.uk/childrenandyoungpeople/sen/sen/types/clneeds/a0013105/guidance-on-the-use-of-restrictive-physical-interventions>

Ministry of Justice advice on self-defence (when published) and Home Office PACE codes

<http://www.homeoffice.gov.uk/publications/police/operational-policing/pacecodes/?view=Standard&pubID=810826>

Legislative links

Education and Inspections Act 2006

<http://www.legislation.gov.uk/ukpga/2006/40/contents>