



# OWLS Academy Trust

## Policy and Procedure: Allegations of Abuse Against Staff Policy

Adopted by The OWLS Academy Trust on	June 2016
Next Review Due	June 2017

## **1. Introduction**

The OWLS takes its responsibility of care for its students seriously. We recognise that any possibility that a member of staff may have hurt a student must be investigated thoroughly, but in a way that does not prejudice either the student or the member of staff. Any investigation of an allegation of abuse against a member of staff must follow the objective and professional standards and routines described here.

## **2. 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 and guidance:

- ❑ The Children Act 1989
- ❑ Section 175 of the Education Act 2002 (local authorities, governing bodies of maintained schools and institutions in the further education (FE) sector)
- ❑ Section 157 of the Education Act 2002
- ❑ The Education (Independent School Standards) (England) Regulations 2010
- ❑ The Children Act 2004
- ❑ Section 11 of the Children Act 2004 (other agencies)
- ❑ Keeping Children Safe in Education 2015

## **3. Initial Allegation Made to the OWLS**

Any allegation of abuse by a member of staff on a student must be reported to the Head Teacher. Should the initial allegation first be made to any other member of staff, then that member of staff must either request the person raising the allegation to report it to the Head Teacher or, if that is not possible, to pass details of the allegation to the Head Teacher immediately.

Should the allegation be made against the Head Teacher, this should be brought to the attention of the <<Chair of Governors/Trustees>> immediately.

Should the allegation meet any of the following criteria then the Head Teacher should report the allegation to the Local Authority Designated Officer (LADO) the same day that the allegation is received:

- ❑ A teacher or member of staff (including a volunteer) in a school, FE college or other education establishment that provides education for children under 18 years of age has:
  - ❑ behaved in a way that has harmed a child, or may have harmed a child;
  - ❑ possibly committed a criminal offence against or related to a child; or
  - ❑ behaved towards a child or children in a way that indicates that they pose/may pose a risk to children.

## **4. Initial Consideration**

The Head Teacher will discuss the matter with the LADO and provide any further details of the allegation and the circumstances in which it was made. The Head Teacher should not investigate the

allegation at this stage. The discussion will also consider whether there is evidence or information that establishes that the allegation is false or unfounded.

If the allegation is not patently false and there is cause to suspect that a child is suffering, or is likely to suffer, significant harm, the LADO will immediately refer it to children's social care and ask for a strategy discussion, in accordance with 'Working Together to Safeguard Children', to be convened straight away. In those circumstances, the strategy discussion should include the LADO and the Head Teacher.

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

## **5. Action Following Initial Consideration**

Where the initial consideration decides that the allegation does not involve a possible criminal offence, it will be for the Head Teacher to deal with it. In such cases, if the nature of the allegation does not require formal disciplinary action, the Head Teacher should institute appropriate action within three 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, the Head Teacher should discuss who will undertake that with the LADO. The LADO is named at the LA.

The investigating officer should aim to provide a report to the Head Teacher within 10 working days.

On receipt of the report of the investigation, the Head Teacher and <<Chair of Governors/Trustees>> should consult the LADO, and decide whether a disciplinary hearing is needed within two working days. If a hearing is needed it should be held within 15 working days.

In any case in which children's social care has undertaken enquiries to determine whether the child or children are in need of protection, the Head Teacher and <<Chair of Governors/Trustees>> should take account of any relevant information obtained in the course of those enquiries when considering disciplinary action.

The LADO should continue to liaise with the OWLS to monitor progress of the case and provide advice or support when required or requested.

## **6. Cases Where a Crime may have been Committed**

If there is no cause to suspect that significant harm is an issue, but a criminal offence might have been committed, the LADO should immediately inform the police and convene a similar discussion to decide whether a police investigation is needed. That discussion should also involve the OWLS.

Where the involvement of children's social work services is not required, as the student is not assessed to be at risk of significant harm, but a police investigation continues, the LADO should agree with the police, the OWLS and any other agency involved with the child, the nature of the allegation and how this must be addressed.

This Joint Evaluation Discussion must take place within one working day of the referral and must consider how to progress enquiries e.g. a criminal process parallel with a disciplinary process or whether disciplinary actions needs to be suspended until police enquiries/prosecution are completed.

These investigations must be reviewed by the police no later than four weeks after the Joint Evaluation Discussion has concluded and thereafter at fortnightly or monthly intervals.

If the police and/or the Crown Prosecution Service (CPS) decide not to charge the individual with an offence, decide to administer a caution, or the person is acquitted by a court, the police should pass all information they have which may be relevant to a disciplinary case to the OWLS without delay. In those circumstances, the Head Teacher should deal with the case in consultation with the LADO.

If the person is convicted of an offence, the police should also inform the employer straight away so that the appropriate action can be taken.

## **7. Allegations which are Likely to Necessitate an Immediate Referral to Child Protection**

The following situations will require immediate referral to child protection:

- Where the student has suffered, is suffering, or is likely to suffer significant or serious harm
- Where the student alleges that a criminal offence has been committed
- Any allegation of a sexual nature

The Head Teacher should be aware that some other complaints may also be regarded as child protection issues and therefore each complaint should be carefully considered in consultation with the LADO before taking any action.

Where allegations of the above are referred to children's services, subsequent action will be in accordance with the local safeguarding children board (LSCB) procedures.

## **8. 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 OWLS to consider suspending the person until the case is resolved. Suspension must not be an automatic response when an allegation is reported. If the OWLS 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 OWLS 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 OWLS must consider carefully whether the circumstances of the case warrant a person being suspended from contact with children at the OWLS until the allegation is resolved, and may wish to seek advice from the personnel adviser. The OWLS 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 OWLS should consider the potential permanent, professional and 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 OWLS to suspend a member of staff or a volunteer, although the OWLS should give appropriate weight to their advice. The power to suspend is vested in the Head Teacher or the governing body who are the employers of staff at the OWLS. 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 OWLS consideration of suspension.

A risk assessment should be carried out for each individual case to determine whether the member of staff should be suspended. The assessment should take into account the context of the allegation, background information in relation to the member of staff, and any outcome following the strategy meeting. It should also take into account whether a temporary transfer or period of paid leave is appropriate as an alternative to suspension. The assessment must be recorded and a copy kept on file.

## **9. Strategy Meeting**

A strategy meeting will be convened within one working day of the referral being made and chaired by the child protection and review unit. The LADO and all relevant personnel including, where appropriate, the Head Teacher and the OWLS HR Business Partner, should attend this meeting in order to share information and participate in the planning of any enquiries. The strategy meeting will be conducted in accordance with LSCB procedures.

The purpose of the strategy meeting is to:

- Consider the risk to the student and other students.
- Share all relevant information about the person who is the subject of the allegation and about the alleged victim.
- Determine the need for investigation and by whom.
- Plan the investigation/enquiries and set timescales for tasks to be undertaken.
- Consider whether any other children are affected by the allegations e.g. the person's own children, grandchildren, or other children in the agency setting such as children placed with foster carers, childminders, or youth clubs.
- Ensure that the person who is the subject of the allegation is kept informed and supported.
- Decide how regular information and support will be provided to the child and family and by whom.
- Plan all interviews and agree who should undertake them so that there is no confusion between a criminal investigation (Section 47 Enquiry) and disciplinary processes.
- Consider the need to inform relevant parties.
- Jointly consider how to manage any media interest.

- ❑ Consider whether the circumstances require the person who is subject to the allegation to be suspended from contact with students; this may change as the investigation progresses and should be reviewed regularly.
- ❑ Consider the appropriate course of action if the allegation is against a governor, a temporary member of staff or a supply teacher.

## **10. Attendance**

Attendance will be determined by OWLS procedures but will usually include representatives from children's services. The member of staff who is the subject of the allegation will not be invited to attend the meeting; however, the strategy meeting will agree when and how the member of staff will be informed. The minutes of the strategy meeting will be circulated by the Chairman of the meeting to relevant parties.

## **11. Communication Following the Strategy Meeting**

The following should be informed of the outcome of the investigation:

- ❑ The student making the allegation and their parent/carer should be informed of the likely course of action and that the matter is confidential and must not be discussed.
- ❑ The member of staff against whom the allegation has been made should be informed of the likely course of action – a record should be kept on the individual's personal file.
- ❑ The <<Chair of Governors/Trustees>> should be informed of the likely course of action.

Subsequent strategy meetings should be held fortnightly, or at a maximum monthly, to review progress.

## **12. Monitoring Progress**

The LADO should regularly monitor the progress of cases, either via review strategy meetings, or by liaising with the police and/or children's social work services colleagues or the OWLS, as appropriate. Reviews should be conducted at fortnightly or monthly intervals, depending on the complexity of the case.

## **13. Referral to DBS**

If, on conclusion of the case, the OWLS ceases to use the person's services, or the person ceases to provide his or her services, the OWLS should consult the LADO about whether a referral to the Disclosure and Barring Service (DBS) is required. If a referral is appropriate the report should be made within one month.

## **14. Keeping Records**

It is important that a clear and comprehensive record of any allegation is made even if police/disciplinary action is not taken or proven. This should include details of the allegation, how the allegation was followed up and resolved, and a note of any action taken, including any sanctions imposed. The record should be kept on the member of staff's personal file. The purpose of this record is to enable accurate information to be given in response to any future reference request if the individual leaves the OWLS. It is also important that accurate and detailed information is held in the event that the DBS makes requests for further information. This information is given to the DBS, if requested, due to the nature of the allegation. A comprehensive record of all allegations will provide

clarification in cases where a future DBS disclosure reveals information from the police about an allegation which did not result in a criminal conviction. The record should be retained until normal retirement age or for 10 years, whichever is the shortest period of time.

## **15. Confidentiality**

Confidentiality should be maintained whenever an allegation is made. However, there may be a need to share information with relevant agencies, for example at a strategy meeting, on a need to know basis. Any enquiries from the press should be directed to the <<Chair of Governors/Trustees>>, unless it is a freedom of information or data protection request in which case the OWLS HR Business Partner or legal representative should be contacted.

## **16. Action to be taken in Respect of False Allegations**

If an allegation made by a student is proved to be false and/or malicious, action should be taken to determine whether the person who made the allegation is in need of services or may have been abused by someone else. In the case of a student deliberately inventing or making a malicious allegation, the Head Teacher should consider talking action in accordance with the **Management of Behaviour Policy**. If it is clear to the Head Teacher and the LADO that the allegation is demonstrably false or unfounded the member of staff should be informed orally and in writing of the allegation, that it is without foundation and that no further action will be taken. Where appropriate, and if requested, support should be offered, which could include occupational health and counselling services. If an allegation made by a member of staff is proved to be false and/or malicious, an investigation should take place in accordance with the OWLS **Disciplinary Policy and Procedures**. The police may also consider taking action against the individual making the allegation.

## **17. Learning Lessons**

Where an allegation has been made against a member of staff, lessons can be learned, whether the allegations are proven or not. At the conclusion of a case, relevant parties should discuss what can be learned and therefore lead to improved practice, either to the OWLS procedures or to help prevent similar events in the future. The LADO and the Head Teacher should review the case.

## **18. Information Sharing**

In a strategy meeting or initial evaluation of the case, the agencies concerned must share all relevant information they have about the person who is the subject of an allegation, and about the alleged victim. Staff attending the strategy meeting should be prepared with the appropriate information – e.g. full name, address, when DBS check was completed, start date, involvement in youth activities, children of their own, and any other information that could be helpful. As per procedures, the police should obtain consent from the individuals concerned to share the statements and evidence they obtain with the OWLS for disciplinary purposes. This should be done as their investigation proceeds rather than after it has concluded. This will enable the police to share relevant information without delay at the conclusion of their investigation or any court case. Children’s social services should adopt a similar procedure when making enquiries to determine whether the student named in the allegation is 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 OWLS without delay.

## **19. 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 OWLS 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 DBS or to the National College for Teaching and Leadership where circumstances require that.

## **20. Those Involved Supporting**

### ***Supporting the Employee***

The OWLS has a duty of care to their employees. They 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 OWLS 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; this may include 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 the police or local authority children's social care services need to be involved, the Head Teacher 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.

## **21. Policy Review**

This policy will be kept under review in order to keep it in line with relevant legislation and modifications authorised, according to the authorisation and issue process detailed in the appendix.

## **Appendix 1**

### **Definitions**

#### **Significant harm**

This is the threshold where compulsory social care intervention must take place. This was introduced by the Children Act 1989 and is defined by the Law Commission as: "Harm as a concept should be taken to include not only ill-treatment (including sexual abuse and forms of ill treatment that are not physical), but also the impairment of physical or mental health and the impairment of physical, emotional, social or behaviour development".

#### **Abuse**

Abuse can be either physical, sexual, emotional harm, or a form of neglect. The definitions of different types of abuse are below.

**Abuse:** a form of maltreatment of a child. Somebody may abuse or neglect a child by inflicting harm, or by failing to act to prevent harm. They may be abused by an adult or adults or another child or children.

**Physical abuse:** a form of abuse which may involve hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocating, or otherwise causing physical harm to a child. Physical harm may also

be caused when a parent or carer fabricates the symptoms of, or deliberately induces, illness in a child.

**Emotional abuse:** the persistent emotional maltreatment of a child such as to cause severe and adverse effects on the child's emotional development. It may involve conveying to a child that they are worthless, unloved, inadequate, or valued only insofar as they meet the needs of another person. It may include not giving the child opportunities to express their views, deliberately silencing them or 'making fun' of what they say or how they communicate. It may feature age or developmentally inappropriate expectations being imposed on children. These may include interactions that are beyond a child's developmental capability as well as overprotection and limitation of exploration and learning, or preventing the child participating in normal social interaction. It may involve seeing or hearing the ill-treatment of another. It may involve serious bullying (including cyberbullying), causing children frequently to feel frightened or in danger, or the exploitation or corruption of children. Some level of emotional abuse is involved in all types of maltreatment of a child, although it may occur alone.

**Sexual abuse:** involves forcing or enticing a child or young person to take part in sexual activities, not necessarily involving a high level of violence, whether or not the child is aware of what is happening. The activities may involve physical contact, including assault by penetration (for example rape or oral sex) or non-penetrative acts such as masturbation, kissing, and rubbing and touching the outside of clothing. They may also include non-contact activities, such as involving children in looking at, or the production of, sexual images, watching sexual activities, encouraging children to behave in sexually inappropriate ways, or grooming a child in preparation for abuse (including via the internet). Sexual abuse is not solely perpetrated by adult males. Women can also commit acts of sexual abuse, as can other children.

**Neglect:** the persistent failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development. Neglect may occur during pregnancy as a result of maternal substance abuse. Once a child is born, neglect may involve a parent or carer failing to: provide adequate food, clothing and shelter (including exclusion from home or abandonment); protect a child from physical and emotional harm or danger; ensure adequate supervision (including the use of inadequate care-givers); or ensure access to appropriate medical care or treatment. It may also include neglect of, or unresponsiveness to, a child's basic emotional needs.

### **Position of trust**

Those working with children and young people should understand that they are in positions of power and trust in relation to these groups. There is potential for exploitation and harm to children and young people, and employees have a responsibility to ensure that an unequal balance of power is not used for personal advantage or gratification. Employees should always maintain professional boundaries and avoid behaviour which might be misinterpreted by others.



## INFORMATION GUIDE FOR EMPLOYEES FACING ALLEGATIONS

The aim of this information guide is to explain the processes involved, and the support and guidance available, if it is alleged that that you have:

- harmed a student or put a child at risk of harm; or
- committed a criminal act toward a student; or
- behaved in a way that raises concern about the risk you may pose to children or young people.

### 1. Initial Action

As soon as possible after the allegation is made, the Head Teacher should consult the Local Authority Designated Officer (LADO) to discuss the next action points, taking advice from social care and the police as needed. The police may advise that you are not told about the allegation immediately.

The Head Teacher's decision in consultation with the LADO will be one, or a combination of the following:

- a) The student is alleged to have suffered, or is likely to suffer, significant harm - which requires immediate referral to social care.
- b) A criminal offence is alleged - which requires referral to social care and police.
- c) The allegation represents poor or inappropriate behaviour - which should be considered under the OWLS disciplinary and/or capability procedures, including referral, if appropriate, to the OWLS occupational health advisor.
- d) The allegation is clearly and demonstrably without foundation and no further action will be taken.

If the conclusion of the initial discussions are a) or b), a strategy discussion should take place involving police, social care, the Head Teacher, LADO and the OWLS HR Business Partner. You will not be invited. The discussion will focus on the needs of the student(s) who may be at risk. It will determine what action should be taken regarding further investigation, but it is not part of any disciplinary procedures.

If the initial discussions conclude the situation is as outlined in c): an investigation will be initiated under the OWLS's disciplinary and/or capability procedures.

If the conclusion is as outlined in d) you should be told orally and in writing that the allegation is without foundation, and that no further action will be taken.

### 2. Types of Possible Investigation

- ❑ Child protection enquiries by social care
- ❑ Criminal investigation by police
- ❑ Disciplinary/capability investigation

A disciplinary investigation will usually be held in abeyance until external agency investigations are complete, unless prior agreement is reached. Whilst these investigations should be conducted as speedily as possible, they should also be balanced against the need to be thorough and fair, in line with natural justice. Statements taken in external investigations could be used in subsequent disciplinary proceedings.

### **3. Suspension**

Suspension is a neutral act, and should not be automatic. Where possible, the decision to suspend should be informed by the strategy discussion, and should only occur when the known facts relating to the allegation indicate:

- ❑ a student may be at risk.
- ❑ the allegations are so serious that dismissal for gross misconduct is possible.
- ❑ suspension is necessary to allow the conduct of the investigation to proceed unimpeded.

Alternatives to suspension will be considered, e.g. leave of absence, transfer of duties, additional supervision.

Where suspension is being considered, an interview with you will normally be arranged. You have the right to be accompanied by a trade union representative or a colleague. You are advised to seek the assistance of your union representative. If you are suspended, one of his/her roles will be to promote your interests and raise issues that may be of concern to you.

The interview is not an examination of the evidence, but an opportunity for you to make representations concerning possible suspension.

Other people, including other staff, should only be told about the allegation on a 'need to know basis'. Notification may be delayed if the police think this could prejudice an investigation.

Those who will be told of the allegation and likely course of action include you, the student concerned, his/her parent/carer, the person making the allegation, your manager, the Head Teacher, OWLSHR Business Partner, the LADO and the investigating agencies as above.

If you are suspended, those persons likely to be on a disciplinary panel, if convened, will be given limited information so any future disciplinary process is not prejudiced. If the matter becomes common knowledge, it may be necessary to issue a brief statement, agreed by the agencies concerned, to parents, pupils and the public.

### **4. Support**

You should expect to be:

- ❑ advised to contact your union representative.
- ❑ given a support contact within the organisation who should keep you up-to-date with the progress of your case.
- ❑ given a team contact, if you are suspended, who will update you about normal organisation activities. Social contact with colleagues should not be precluded unless this would be detrimental to the investigation. The type of information and frequency of contact should be agreed, but colleagues should not comment on or discuss the investigation.
- ❑ offered staff counselling service and/or occupational health support.

This may be a stressful time, so in addition to contacting your union representative, you are advised to see your GP if you think your health may be affected.