



Oxford Sixth Form College

A NORD ANGLIA EDUCATION SCHOOL

Managing allegations against staff

Revised June 2023

To be reviewed June 2024

Aim

The ultimate aim of Oxford Sixth Form College's Dealing with allegations of abuse against staff policy is to:

- Support all staff to ensure a fair and just process is adhered to following any allegation.
- make it clear to all students and staff allegations are taken seriously and given due care and attention

The DfE have provided statutory guidance relating to the College's duties in handling allegations of abuse against teachers and other staff.

<http://www.education.gov.uk/aboutdfe/advice/g0076914/dealing-with-allegations-of-abuse-against-teachers-and-other-staff>

The guidance relates to the following legislation.

- the Children Act 1989;
- section 157 of the Education Act 2011 and the Education (Independent School Standards) (England) Regulations 2014
- the Children Act 2004;
- section 11 of the Children Act 2004 (other agencies);
- Keeping Children Safe in Education 2023 (KCSiE) and
- Working Together to Safeguard Children 2018

ALLEGATIONS MADE AGAINST STAFF

Regrettably, allegations of abuse may involve a member of the College staff. In these circumstances the allegations must be reported to the Designated Safeguarding Lead (DSL) immediately. On receipt of such an allegation the DSL will contact the Local Authority Designated Officer (LADO). If the allegation concerns the Principal, the DSL will contact the Chair of Governors as a matter of urgency.

The College is required to manage cases of allegations that might indicate a person would pose a risk of harm if they continue to work in regular or close contact with students in their present position, or in any capacity. It should be used in respect of all cases in which it is alleged that a teacher or member of staff (including supply teachers, volunteers and contractors) has:

- behaved in a way that has harmed a student, or may have harmed a student and/or
- possibly committed a criminal offence against or related to a student and/or
- behaved towards a student in a way that indicates he or she may pose a risk of harm to students, and/or
- behaved, or may behave in a way that indicates they may not be suitable to work with children.

The last bullet point above includes behaviour that may have happened outside of College that might make an individual unsuitable to work with children, this is known as transferable risk.

Where appropriate an assessment of transferable risk to children with whom the person works should be undertaken. If in doubt seek advice from the local authority designated officer (LADO).

Note: Allegations against a teacher who is no longer teaching should be referred to the police. Historical allegations of abuse should also be referred to the police.

Principles

All allegations about members of staff will be managed by the Principal (the Case Manager) with accordance to the following principles:

- Safeguarding the student is paramount, but the College also has a duty of care towards its employees. The process should be well managed and carried out in a way that provides effective protection for the student and at the same time supports the person who is the subject of the allegation.
- Investigations should be fair, thorough, consistent and quick, and the response should be proportionate
- The process should be transparent but confidential

The person about whom the allegation has been made should be told about the allegations and the progress of the case and given a full opportunity to answer the allegation and make representation about it. Resignation and compromise agreements must not prevent an allegation being followed up.

Every effort should be made to maintain confidentiality and guard against unwanted publicity whilst an allegation is being considered or investigated.

Initial response to an allegation

Where the College identifies a child has been harmed, that there may be an immediate risk of harm to a child or if the situation is an emergency, they should contact local authority children's social care via the **MASH team (0345 050 7666)** and as appropriate the **police (999)** immediately.

There are two aspects to consider when an allegation is made:

- Looking after the welfare of the child - the DSL (or deputy) is responsible for ensuring that the child is not at risk and referring cases of suspected abuse to the local authority children's social care.

- Investigating and supporting the person subject to the allegation - the case manager should discuss with the **LADO, Jo Lloyd (01865 810603 or 07584 581180)** the nature, content and context of the allegation, and agree a course of action. **Before contacting the LADO**, the college should conduct basic enquiries in line with local procedures to establish the facts and to help them determine whether there is any foundation to the allegation, being careful not to jeopardise any future police investigation. For example:

- was the individual in the school or college at the time of the allegations
- did the individual, or could the individual have come into contact with the child
- are there any witnesses, and
- was there any CCTV footage?

When dealing with allegations the college should apply common sense and judgement, deal with allegations quickly, fairly and consistently, and provide effective protection for the child and support the person subject to the allegation.

If there is cause to suspect a child is suffering, or is likely to suffer significant harm, a strategy discussion involving the police and/or local authority children's social care will be convened in accordance with the statutory guidance Working Together to Safeguard Children. If the allegation is about physical contact, for example restraint, the strategy discussion¹²⁵ or initial evaluation with the LADO should take into account that teachers and other college staff are entitled to use reasonable force to control or restrain children in certain circumstances, including dealing with disruptive behaviour (see promoting Good Behaviour policy).

Where the case manager is concerned about the welfare of other children in the community or the member of staff's family, they should discuss these concerns with the DSL (or deputy) and make a risk assessment of the situation. It may be necessary for the DSL to make a referral to local authority children's social care via MASH or LCSS.

Where it is clear that an investigation by the police or local authority children's social care is unnecessary, or the strategy discussion or initial assessment decides that is the case, the LADO should discuss the next steps with the case manager.

No further action

Where the initial discussion leads to no further action, the case manager and the LADO should:

- record the decision and justification for it, and
- agree on what information should be put in writing to the individual concerned and by whom.

All records must be kept confidentially, in the member of staff HR folder and on the students safeguarding file. Records will be retained according to the College Data Protection policy.

Further enquiries

Where further enquiries are required to enable a decision about how to proceed, the LADO and case manager should discuss how and by whom the investigation will be undertaken. The LADO will provide advice and guidance to the College when considering allegations against adults working with children. The LADO's role is not to investigate the allegation, but to ensure that an appropriate investigation is carried out, whether that is by the police, local authority children's social care, the College, or a combination of these. In straightforward cases, the investigation should be undertaken by the Vice Principal or Assistant Principal.

Where there is a lack of appropriate resource within the College, or the nature or complexity of the allegation requires it, the allegation will require an independent investigator. The College should ensure they secure the services of a person who is independent of the College.

The case manager should monitor the progress of cases to ensure that they are dealt with as quickly as possible in a thorough and fair process. **Wherever possible, the first review should take place no later than four weeks after the initial assessment.** Dates for subsequent reviews, ideally at fortnightly (and **no longer than monthly**) intervals, should be set at the review meeting if the investigation continues.

Supply teachers and all contracted staff

In some circumstances the College will have to consider an allegation against an individual not directly employed by us, where the disciplinary procedures do not fully apply because agencies will have their own policies and procedures; for example, supply teachers or contracted staff provided by an employment agency or business, e.g., Hyline staff.

Whilst the College is not the employer of supply teachers or contracted staff, we have a responsibility to ensure allegations are dealt with properly. In no circumstances should the College decide to cease to use a supply teacher or contracted staff due to safeguarding concerns, without finding out the facts and liaising with the LADO to determine a suitable outcome. The Governors should discuss with the supply agency or agencies where the supply teacher or contracted staff is working across a number of schools or colleges, whether it is appropriate to suspend the person, or redeploy them to another part of the College, whilst they carry out their investigation.

Agencies/businesses should be fully involved and co-operate with any enquiries from the LADO, police and/or local authority children's social care. The College will usually take the lead because agencies and businesses do not have direct access to children or College staff, so they will not be able to collect the facts when an allegation is made, nor do they have all the relevant information required by the LADO as part of the referral process. Supply teachers and contracted staff, whilst not employed by the College, are under the supervision, direction and control of the governing body or proprietor when working in the College. They should be advised to contact their trade union representative if they have one, or a colleague for support. The allegations management meeting which is often arranged by the LADO should address issues such as information sharing, to ensure that any previous concerns or allegations known to the agency or agencies are considered by the college during the investigation.

When using a supply agency or business, the college should inform the agency of the process for managing allegations but also take account of the agency's policies and the duty placed on agencies to refer to the DBS as personnel suppliers. This should include inviting the agency's human resource manager or equivalent to meetings and keeping them up to date with information about its policies.

Governors

If an allegation is made against a governor, the College will follow our own local procedures. Where an allegation is substantiated, we will follow the procedures to consider removing them from office.

Suspension

Suspension should not be an automatic response when an allegation is reported. All options to avoid suspension should be considered prior to taking that step. The case manager must consider carefully whether the circumstances warrant suspension from contact with children at the College, until the allegation is resolved. It should be considered only in cases where there is cause to suspect a child or other children at the college is/are at risk of harm, or the case is so serious that there might be grounds for dismissal. If in doubt, the case manager will seek views from their personnel adviser and the LADO, as well as the police and local authority children's social care where they have been involved.

Where the College is made aware that the Secretary of State has made an interim prohibition order, in respect of an individual who works at the College, we will take immediate action to ensure the individual does not carry out work in contravention of the order. This means that pending the findings of the Teacher Regulation Agency (TRA) investigation, the individual must not carry out teaching work. The College will refer to the policy on pay arrangements (see Staff Handbook, 4.2) whilst the person is suspended or where there is an interim prohibition order in place.

In many cases, an inquiry can be resolved quickly and without the need for suspension. The case manager will decide on whether the individual should continue to work at the College, based on consultation with the LADO who will provide relevant information received from the police or local authority children's social care on whether they have any objections to the member of staff continuing to work during the investigation of the case.

Based on advice from the College's HR Manager and/or a risk analysis drawn up with the LADO, the following alternatives should be considered by the case manager before suspending a member of staff:

- redeployment within the College so that the individual does not have direct contact with the child or children concerned
- providing an assistant to be present when the individual has contact with children
- redeploying to alternative work in the college so the individual does not have unsupervised access to children
- moving the child or children to classes where they will not come into contact with the member of staff, but this decision should only be made if it is in the best interest of the child or children concerned and takes accounts of their views. It should be made making it clear that this is not a punishment and after parents have been consulted, or
- temporarily redeploying the member of staff to another role in a different location, for example to an alternative school or college or where available.

These alternatives allow time for an informed decision regarding the suspension, this will, however, depend upon the nature of the allegation. The case manager should consider the potential permanent professional reputational damage to employees that can result from suspension where an allegation is later found to be unfounded, unsubstantiated, malicious, or false.

If immediate suspension is considered necessary, the case manager should record the rationale and justification for such a course of action. This should also include what alternatives to suspension have been considered and why they were rejected.

Where it has been deemed appropriate to suspend the person, written confirmation should be given **within one working day**, giving as much detail as appropriate for the reasons for the suspension. It is not acceptable for an employer to leave a person who has been suspended without any support. The person should be informed at the point of their suspension who their named contact is within the organisation and provided with their contact details.

Local authority children's social care or the police may give their view to the LADO but they cannot require the case manager to suspend a member of staff or the removal of a volunteer, although the case manager should give appropriate weight to their views.

The power to suspend is vested in the governing body who are the employers. However, where a strategy discussion, or initial assessment, concludes that there should be enquiries by local authority children's social care, and/or an investigation by the police, the LADO should canvass police and local authority children's social care for views about whether the accused member of staff should be suspended from contact with children. Police involvement does not make it mandatory to suspend a member of staff; this decision should be taken on a case-by-case basis having undertaken a risk assessment about whether the person poses a risk of harm to children.

Supporting those involved

Duty of care

The welfare of a child is paramount, and this will be the prime concern in terms of investigating an allegation against a person in a position of trust. However, when an allegation or safeguarding concern is being investigated it is likely to be a very stressful experience for the adult subject to the investigation, and potentially for their family members. It is important that we offer appropriate welfare support at such a time and recognises the sensitivity of the situation. Information is confidential and should not ordinarily be shared with other staff or with children or parents who are not directly involved in the investigation.

Employers have a duty of care to their employees. We will:

- manage and minimise the stress caused by the allegation
- inform the individual as soon as possible, explaining the likely course of action, guided by the LADO, and the police where necessary
- advise the individual to contact their trade union representative, or a colleague for support
- appoint a named representative to keep the person informed about the progress of the case
- provide access to counselling or medical advice where appropriate, and,
- not prevent social contact with work colleagues and friends, when staff are suspended, unless there is evidence to suggest this may prejudice the gathering of evidence.

Parents or carers of the child or children involved will be:

- formally told about the allegation as soon as possible (In deciding what information is disclosed, careful consideration should be given to the provisions of the Data Protection Act 2018, the law of confidence and, where relevant, the Human Rights Act 1998). The case manager should consult the LADO and where involved local authority children's social care and/or the police on what information can be disclosed
- kept informed about the progress of the case, only in relation to their child - no information can be shared regarding the staff member.

Confidentiality and Information sharing

In an allegations management meeting or during the initial assessment of the case, the agencies involved should share all relevant information they have about the person who is the subject of the allegation, and about the alleged victim, see paragraphs 115-123 in Part two KCSiE 2023 about information sharing.

Where the police are involved, wherever possible the College should ask the police to obtain consent from the individuals involved to share their statements and evidence for use in the employer's disciplinary process. This should be done as their investigation proceeds and will enable the police to share relevant information without delaying the conclusion of their investigation or any court case.

The College must make every effort to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered. Whilst the Education Act 2011 amended the Education Act 2002, imposes reporting restrictions in schools, these do not apply to colleges. However, the identity of the person concerned, and the nature of the allegations should not be shared publicly, unless the individual effectively waives their right to anonymity by going public themselves or by giving their written consent for another to do so.

In accordance with the Authorised Professional Practice published by the College of Policing in May 2017, the police will not normally provide any information to the press or media that might identify an individual who is under investigation, unless and until the person is charged with a criminal offence. In exceptional cases where the police wish to depart from that rule, for example an appeal to trace a suspect, they must apply to a magistrates' court to request that reporting restrictions be lifted.

The case manager should take advice from the LADO, the police and local authority children's social care to agree the following:

- who needs to know and exactly what information can be shared

- how to manage speculation, leaks and gossip
- what, if any, information can be reasonably given to the wider community to reduce speculation and
- how to manage press interest if, and when, it should arise.

Allegation outcomes

The definitions that should be used when the College determines the outcome of an allegation are set out below:

- **Substantiated:** there is sufficient evidence to prove the allegation
- **Malicious:** there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive or cause harm to the person subject of the allegation
- **False:** there is sufficient evidence to disprove the allegation
- **Unsubstantiated:** there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence, or
- **Unfounded:** to reflect cases where there is no evidence or proper basis which supports the allegation being made.

Ultimately the options open to the college depend on the nature and circumstances of the allegations and the evidence and information available. This will range from taking no further action, to dismissal or a decision not to use the person's services in future.

If the allegation is substantiated and:

- the person is dismissed; resigns, or otherwise ceases to provide his or her services, or
- the employer ceases to use the person's services.

In the case of a member of teaching staff at College, the case manager must consider whether to refer the matter to the TRA to consider whether the individual should be prohibited from teaching.

There is a legal requirement for employers to make a referral to the DBS where they consider an individual has engaged in conduct that harmed (or is likely to harm) a child; or if a person otherwise poses a risk of harm to a child (see paragraph 348 KCSiE 2023 for further information).

Following a criminal investigation or a prosecution

The police should inform the LADO and the employer immediately when:

- a criminal investigation and any subsequent trial is complete
- it is decided to close an investigation without charge, or
- it is decided not to continue to prosecute after the person has been charged.

In those circumstances, during the joint assessment meeting the LADO should discuss with the case manager whether any further action, including disciplinary action, is appropriate and, if so, how to proceed. The information provided by the police and/or local authority children's social care should also inform that decision. The options will depend on the circumstances of the case and the consideration should take into account the result of the police investigation or the trial, as well as the different standard of proof required in disciplinary and criminal proceedings.

Unsubstantiated, unfounded, false or malicious allegations

If an allegation is determined to be unsubstantiated, unfounded, false or malicious, the LADO and the case manager should consider whether the child and/or the person who has made the allegation is in need of help or may have been abused by someone else and this is a cry for help. In such circumstances, a referral to local authority children's social care may be appropriate.

If an allegation is shown to be deliberately invented or malicious, the College, should consider whether any disciplinary action is appropriate against the individual who made it as per our Promoting Good Behaviour policy.

Returning to work

Where it is decided on the conclusion of a case that a person who has been suspended can return to work, the case manager should consider how best to facilitate that. Guidance and advice are usually provided via the HR Manager or the LADO. Most people will benefit from

some help and support to return to work after a stressful experience. Depending on the individual's circumstances, a phased return and/or the provision of a mentor to provide assistance and support in the short term may be appropriate. The case manager should also consider how the person's contact with the child or children who made the allegation can best be managed if they are still attending the College.

Managing the situation and exit arrangements

Resignations and 'settlement agreements'

'Settlement agreements' (sometimes referred to as compromise agreements), by which a person agrees to resign if the employer agrees not to pursue disciplinary action and both parties agree a form of words to be used in any future reference, should not be used, where there are allegations that indicate the person is a risk or poses a risk of harm to children or deemed not suitable to work with children. Such an agreement will not prevent a thorough police and/or college investigation where that is appropriate.

The College will not cease the investigations if the person leaves, resigns or ceases to provide their services. 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.

Wherever possible, the accused should be given full opportunity to answer the allegation and make representations about it. The process of recording the allegation and any supporting evidence and reaching a judgement about whether it can be substantiated or otherwise on the basis of all the information available, should continue even if the accused does not cooperate. It may be difficult to reach a conclusion in those circumstances, and it may not be possible to apply any disciplinary sanctions if a person's period of notice expires before the process is complete, but it is important to reach and record an outcome wherever possible. The person concerned should be notified of the conclusion of the allegations and sanctions that might be posed.

Other than where allegations are false, malicious, unsubstantiated, or unfounded, the outcome should be made clear when providing references to prospective employers. This is particularly important where the person moves into another position involving working with children.

It is not appropriate to reach a settlement/compromise agreement if the person subject to the allegation resigns or their services cease to be used. However, in limited circumstances college sometimes use settlement agreements to end the employment relationship on agreed terms, but not where there is an allegation that the individual poses a risk to children.

Where a settlement/compromise agreement is used, the college will not let it prevent us from:

- fulfilling our legal duty to refer cases to the DBS where the referral criteria are met – see paragraph 348 KCSiE 2023. Non-compliance of this duty is a criminal offence, or
- providing a reference to potential employers when requested, or
- considering whether to make a referral to the TRA where the criteria are met - see paragraph 351 KCSiE 2023.

Record Keeping

Details of allegations following an investigation that are found to have been malicious or false should be removed from personnel records, unless the individual gives their consent for retention of the information. However, for all other allegations, i.e., substantiated, unfounded and unsubstantiated it is important that the following information is kept on the file of the person accused:

- a clear and comprehensive summary of the allegation
- details of how the allegation was followed up and resolved
- a note of any action taken, decisions reached and the outcome i.e., substantiated, unfounded or unsubstantiated
- a copy provided to the person concerned, where agreed by local authority children’s social care or the police, and
- a declaration on whether the information will be referred to in any future reference.

The purpose of the record is to enable accurate information to be given in response to any future request for a reference. It will provide clarification in cases where future DBS checks reveal information from the police about an allegation that did not result in a criminal conviction and it will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time.

The College has an obligation to preserve records which contain information about allegations of sexual abuse for the Independent Inquiry into Child Sexual Abuse (IICSA), for the term of the inquiry (further information can be found on the IICSA website). All other records should be retained at least until the accused has reached normal pension age or for a period of 10 years from the date of the allegation if that is longer (see Data Protection policy).

The Information Commissioner has published guidance on employment records in its Employment Practices Code and supplementary guidance, which provides some practical advice on record retention.

References

Cases in which an allegation was found to be false, unfounded, unsubstantiated or malicious should not be included in employer references. Any repeated concerns or allegations which have all been found to be false, unfounded, unsubstantiated or malicious should also not be included in any reference. See paragraph 221 KCSiE 2022 for further information on references. Substantiated allegations should be included in references, provided that the information is factual and does not include opinions.

Learning lessons

Throughout the process in handling allegations and at conclusion of a case in which an allegation is substantiated, the LADO should review the circumstances of the case with the case manager to determine whether there are any improvements to be made to the college's procedures to help prevent similar events in the future. This should include issues arising from any decision to suspend the member of staff, the duration of the suspension and whether or not suspension was justified. Lessons should also be learnt from the use of suspension when the individual is subsequently reinstated. The LADO and case manager should consider how future investigations of a similar nature could be carried out without suspending the individual.

Non recent allegations

Where an adult makes an allegation to the college that they were abused as a child, the individual should be advised to report the allegation to the police. Non recent allegations made by a child, should be reported to the LADO in line with the local authority's procedures for dealing with non-recent allegations. The LADO will coordinate with local authority children social care and the police. Abuse can be reported no matter how long ago it happened.

Concerns and or allegations that do not meet the harm threshold

The College Low Level Concerns policy sets out the processes to deal with any concerns (including allegations) which do not meet the harm threshold. For further information please refer to the Low-Level Concerns policy and/or KCSiE 2023, paragraph 424.