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A011: Harassment & bullying policy & procedure for all staff in schools with delegated budgets

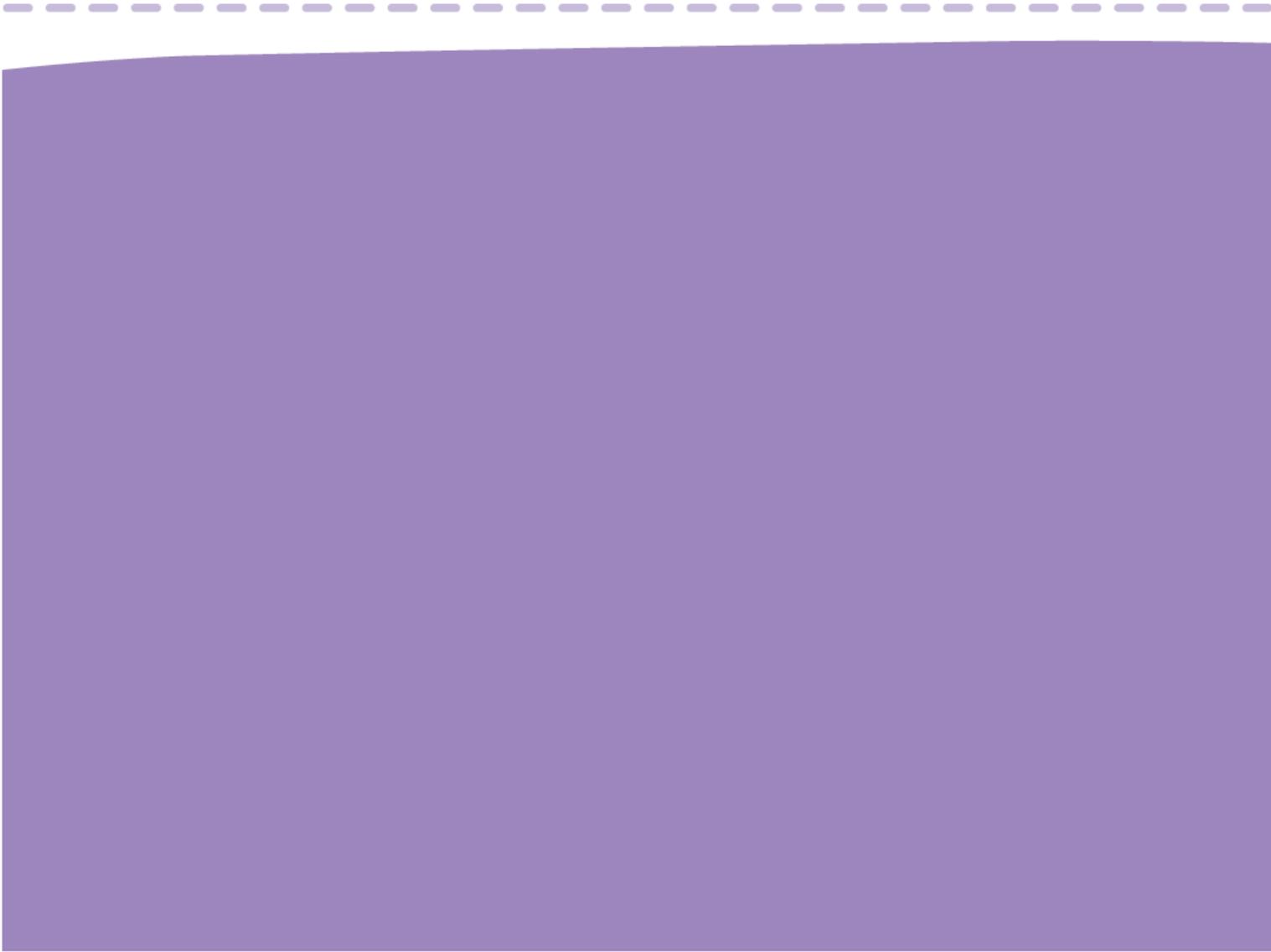
Management Support policy document

Adopted by the Governing Body of:

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1. STATEMENT OF INTENT

- 1.1 The governing body wishes to maximise the well-being of all those who work at the school, and therefore an environment which eliminates and prevents harassment and bullying is an essential prerequisite of this.
- 1.2 The Governing Body is committed to providing a workplace which is free from harassment and bullying in all its forms and will take all reasonable steps, where appropriate, in consultation with recognised trade unions, to achieve this object.

2. PURPOSE AND STATUS OF THIS DOCUMENT

- 2.1 As the employer, the Governing Body has a legal responsibility (which it shares with the LEA) to protect the health and safety of all its employees, and this includes the need to provide a working environment in which all employees are free from bullying and harassment. The provisions of this document therefore apply to all staff working in the school.
- 2.2 Employers are prima facie liable for what their employees do in the course of their employment, whether or not the employer knows of their actions. It is of the utmost importance that governors have procedures in place that combat harassment and protect the dignity of all staff.
- 2.3 The Governing body acknowledges its duty to respond to Employment Tribunals on matters relating to harassment and bullying and nothing within this document should be construed as precluding the right of anyone working at the school to seek such redress. It is the policy of the Authority to support governing bodies in matters relating to Employment Tribunals and where these procedures have been fully complied with, would expect to do so.

3. INTRODUCTION

- 3.1 This policy document is concerned with the prevention of harassment and bullying at work. The intention is to contribute to a working environment where bullying is known to be unacceptable and allows individuals to raise complaints in the knowledge that management will act sensitively, discreetly and effectively. This document is not intended to inhibit reasonable and effective management of staff.
- 3.2 There is much evidence to suggest that harassment and bullying at work affects working conditions and health and safety, and undermines equality at work. Such behaviour also impacts adversely on educational provision because it:

- can lead to stress-related illness among staff resulting in increased absenteeism;
- can demoralise staff and affect work performance;
- presents an unacceptable model for children's own behaviour.

4. HARASSMENT AND BULLYING IN THE WORKPLACE

- 4.1 There is a large body of English, and increasingly, European Law which deals with these issues; the effect of which is to place significant duties on employers both to minimise the risk of harassment and to deal with complaints when they arise. The legal framework is outlined in Annex 2.
- 4.2 Types of harassment can range from actual physical violence to more subtle and less obvious forms. Whatever the form, it is unwanted behaviour which is unwelcome and unpleasant for the recipient. Harassment may be verbal or non-verbal and it may be overtly and plainly demonstrated or implied.
- 4.3 Bullying is a form of harassment in which the bully undermines and belittles or assaults the recipient. Bullies may seek to exploit others' perceived personal or professional weaknesses, either because they enjoy the exercise of such power, or because they are under pressure themselves, or even because they believe such behaviour is a legitimate means of managing relationships.
- 4.4 Examples of the behaviour that may constitute harassment and bullying can be found in Annex 1 to this document.

5. RESPONSIBILITIES

STAFF RESPONSIBILITIES

- 5.1 It is the responsibility of all members of staff to ensure that their own behaviour is appropriate to the school as a workplace and does not contribute to an environment in which harassment is either ignored, condoned or encouraged.
- 5.2 All staff should challenge offensive behaviour when it occurs, or bring it to the attention of a senior colleague. Providing support to colleagues who are experiencing harassment will help to avoid a culture where unacceptable behaviour becomes the norm.

HEADTEACHERS' RESPONSIBILITIES

- 5.3 Headteachers have a duty which they share with others in leadership/managerial roles to establish and maintain a positive working environment which is free from bullying and harassment for their staff. In particular, Headteachers are responsible for:

- a) communicating the policy to all staff in such a way as to promote its understanding and making it easily accessible;
- b) managing staff in a professional and sensitive manner;
- c) ensuring that the school environment has a culture where harassment and bullying is unacceptable;
- d) ensuring that the policy is implemented effectively and efficiently at all levels throughout the school;
- e) taking all complaints of harassment and bullying seriously, ensuring the necessary action is taken to address the matter promptly, and as sensitively and confidentially as possible;
- f) ensuring that appropriate support is available to complainants during the investigation of their complaint;
- g) making it clear that malicious and vexatious allegations are also serious matters and will not be tolerated;
- h) ensuring that appropriate support is available to the alleged perpetrator during the investigation of the complaint;
- i) ensuring that appropriate support is available to witnesses during the investigation of the complaint.

GOVERNING BODY RESPONSIBILITIES

5.4 The governing body has the responsibility to:

- a) meet its legal duties and responsibilities and act at all times within the legal framework;
- b) have an up-to-date and comprehensive policy on issues of harassment and bullying;
- c) receive reports from the Headteacher on the application of the procedure;
- d) agree that the Chair be the contact for complaints of harassment made against the Headteacher;
- e) review the policy at regular intervals.

6. RECOGNISING THE PROBLEM

- 6.1 A member of staff subjected to harassment or bullying may not always recognise the difficulty, or if they do, they may find it difficult to express their feelings to a third party.
- 6.2 Whilst they may feel stressed or anxious, they may attribute this to the pressures of work rather than the behaviour of a colleague.
- 6.3 It is important for all staff, but especially managers, to be aware of signs indicating that there may be a difficulty. These can include:
- a) excessive fear of meeting or speaking with a particular colleague;
 - b) loss of confidence, self-worth, self belief and avoidance of risk-taking;
 - c) reluctance to voice an opinion;
 - d) a gradual realisation that they are afraid to go into school;
 - e) physical ill-health, such as unintended weight loss, disrupted sleep, nausea, fearfulness, headaches etc.

7. PROCEDURE FOR DEALING WITH ALLEGATIONS OF BULLYING AND HARASSMENT

General Comments

Most individuals experiencing harassment and intimidation simply want the situation to stop and in many cases problems can often be resolved without recourse to formal procedures. Consideration should be given to the fact that the alleged perpetrator may be unaware that his/her behaviour is offensive and may be only too willing to stop when alerted.

Where harassment or bullying is of such a serious and extreme nature that a criminal offence may have occurred, the victim may wish to report the incident to the police. Where such action has been taken, it will not normally be necessary to await the outcome of criminal proceedings before taking action.

The nature of harassment and bullying may be such that difficulties develop over a period of time. On the other hand, there may be a single incident which is so serious as to warrant immediate formal investigation. In either scenario any formal complaint of harassment or bullying should be made as soon as an individual becomes concerned so that undesirable behaviour can be stopped at the earliest opportunity.

Cases of harassment and bullying should be reported at the earliest opportunity. When there is a delay this may impede a thorough investigation; in any event complaints should normally be lodged within a period of six months from the date of the alleged incident. Where an incident is outside that period, an explanation should be sought. It is recognised, however, that it may take a

member of staff considerable time to find the courage to raise concerns about another colleague, especially a colleague with greater seniority.

8. THE INFORMAL STAGE

The aim of the informal stage is to allow individuals who feel that they are the subject of harassment or bullying (preferably personally or through a third party) to inform the person or persons involved that their conduct is regarded as unwelcome, offensive and/or interfering with them carrying out their duties.

At this informal stage there is an opportunity for resolution without recourse to the formal procedure and experience suggests that matters addressed in this way and at this stage are much more likely to lead to a successful outcome for all parties concerned.

This informal stage does not detract from the sensitivity or the potential seriousness of the situation. On the contrary, it allows complainants greater flexibility in choosing the most appropriate option they wish to follow having sought advice from their professional association/trade union representative, a working colleague, or member of the school's senior management team.

It is often the case that a complainant feels uncomfortable in approaching the alleged perpetrator directly. In such a situation they have a right to seek help from a friend or trade union or professional association representative. Where a school has an accredited workplace Health and Safety representative the complainant may wish to seek the help from him/her. An approach to the alleged perpetrator by a third party may be helpful.

Where a mutually agreed understanding is reached, and the alleged perpetrator accepts that their behaviour has or may have caused offence and that it will not occur again, (and possibly the victim accepts they were wrong or at fault in some way), this should be the end of the matter.

If the informal stage is not successful in resolving the situation, or the complainant does not wish to raise the matter in this way, or it is otherwise considered inappropriate by the complainant due, for example, to the seriousness of the complaint, then the complainant may choose to make a formal allegation.

It is essential at this stage to be aware that the behaviour of the alleged perpetrator may be unintentional. It is therefore of the utmost importance to ensure that sensitivity and confidentiality prevails throughout the process for all parties concerned.

During or at the start of the informal stage the complainant may wish to inform the Headteacher of the matter. Keeping the Headteacher informed is desirable but it is recognised that circumstances can arise where the complainant would not wish to do so. Headteachers will wish to acknowledge this.

On occasions, counter allegations may be made by persons against whom complaints have been made when they are informed that complaints have been lodged against them. For example, they may claim to have been harassed by the first complainant, or that their behaviour has been provoked by the complainant. Both parties allegations will normally be dealt with as entirely separate matters under this procedure.

9. THE FORMAL STAGE

The formal stage of the procedure for dealing with harassment may result from:

- a) the registering of a formal complaint by the complainant (see below);
- b) a failure to resolve the matter through the informal procedures.

It is of the utmost importance to ensure that all sensitivity and confidentiality prevail throughout the process for all parties concerned.

At the time of involving the formal stage of the procedure, the complainant should submit a detailed written complaint to the Headteacher (or Chair of Governors if the complaint is against the Headteacher) providing:

- a) clear, specific allegations against the named person or persons;
- b) dates, times and witnesses to any incidents;
- c) factual descriptions of events rather than opinions or assumptions;
- d) an indication of the effect of each incident on the complainant;
- e) any documentary evidence;
- f) details of any action the complainant, or others, have already taken.

9.4 The Headteacher or Chair of Governors should send the complainant an acknowledgement letter within 5 days of receipt of the complaint.

9.5 A copy of this written statement should then be sent by the Headteacher (or Chair of Governors) to the following, marked private and confidential:

- a) the person against whom the complaint is made;
- b) the Headteacher, when a complaint is made to the Chair of Governors against the Headteacher;

- c) as a matter of courtesy the Headteacher/Chair of Governors should contact the alleged perpetrator to advise them that written notification of a formal complaint was pending.
- 9.6 The Headteacher (or Chair of Governors) should notify the Management Support Adviser for the school (see Annex 3) that a matter is to be dealt with at the Formal Stage.
- 9.7 On occasions, counter allegations may be made by persons against whom complaints have been made when they are informed that complaints have been lodged against them. For example, they may claim to have been harassed by the first complainant, or that their behaviour has been provoked by the complainant. Both parties' allegations will normally be dealt with as entirely separate matters under this procedure.

10. INVESTIGATION OF A FORMAL ALLEGATION

Having acknowledged receipt of the complaint the Headteacher or Chair of Governors will consult with the school's Management Support Adviser as to who should be appointed as Investigating Officer. This will normally be a different member of the Management Support Group.

Investigation procedures into allegations of harassment or bullying must be independent, skilled and objective. The Investigating Officer appointed must therefore not have had any previous involvement with the case and will be sensitive to the wishes of the complainant wherever possible.

Where a complainant so requests, or where a complaint involves the Headteacher, then an Investigating Officer must be appointed who does not work at or with the school. In any event, investigating officers must be at an appropriate level of seniority and must have sufficient experience and/or training to allow thorough investigations to take place. The investigation should normally be completed within 25 working days of the complaint being registered, but may need to be extended to accommodate particular circumstances. Where it seems to the Investigating Officer that the timescale will probably exceed 25 working days, he/she will consult with the staff member's representative.

During the investigation every effort must be made to protect the legitimate rights of all parties involved. In particular the following principles shall be adhered to:

- a) strict confidentiality must be maintained at all times. Any breach of confidentiality would normally lead to disciplinary action;
- b) throughout the investigation process, the complainant, the alleged perpetrator and any others interviewed shall be entitled to be

accompanied by either a friend or professional association/trade union representative.

The first step in the investigation to be taken by an Investigating Officer will be to speak to the complainant and then to the alleged perpetrator. Witnesses may be interviewed as part of the investigation and asked to provide a written statement. Where witnesses have been identified by the complainant, and particularly where witnesses are interviewed, the alleged perpetrator will be informed. In such instances, it is important that the witnesses do not suffer any personal detriment as a result, providing that they have acted in good faith.

The alleged perpetrator must be shown the same degree of sensitivity, protection and discretion as the person making the allegation. Only in extreme circumstances should it be necessary to make alternative arrangements for working while the investigation is being carried out.

A complainant should not unnecessarily be required to repeatedly recount the events that form the basis of the complaint. Recounting the experience can be difficult and damaging to the employee's dignity.

In extreme cases and if the available evidence warrants it, it may be necessary to suspend the alleged perpetrator. Suspension is a neutral act and as such does not of itself imply that any pre-emptive judgement has been reached. Advice should be taken from the school's Management Support Adviser when such action is being considered.

11. OUTCOME OF THE INVESTIGATION

The investigation will conclude with a report by the Investigating Officer to the Headteacher or Chair of Governors. This will summarise the Investigating Officer's findings on the allegations and recommend further action which could include:

- a) a recommendation to take no further action on the complaint. This will be appropriate if the Investigating Officer decides that there is a lack of evidence relating to the complaint or that the complaint is untrue;
- b) a recommendation to take action in order to deal with the matter on the basis that it is not sufficiently serious to warrant formal disciplinary action. Such action could include:
 - an informal warning in the form of written management advice confirmed orally;
 - an instruction to the member of staff to apologise to the complainant;

and/or

- an instruction to the member of staff to undertake appropriate guidance and/or training;
- and/or
- appropriate changes in working arrangements which must not be to the disadvantage of the complainant;
- c) a recommendation to initiate formal disciplinary action because there is objective evidence to support the allegation that harassment or bullying has taken place.

Where a Headteacher (or Chair of Governors when the complaint is against the Headteacher) determines to take no action (see 11.1(a) above) irrespective of the recommendation made in either 11(b) or 11(c), he/she shall give written reasons for this determination to the complainant and the alleged perpetrator. Failure to give such information will be regarded as a breach of this procedure.

Where the Investigating Officer considers that a complaint is untrue and malicious he/she will recommend a second investigation of the circumstances. This may lead to consideration of disciplinary action against the complainant. Suspension may be necessary but should be seen as a neutral act which does not of itself imply that any pre-emptive judgement has been reached.

The Headteacher (or Chair of Governors in the case of a Headteacher) will write to the complainant and the alleged perpetrator detailing the findings of the investigation and the action to be taken. This letter will contain an undertaking that the complainant and any witnesses will not be victimised or suffer any detriment as a result of having made the complaint.

Subject to 11.4 irrespective of whether a complaint is upheld, it is important that the complainant experiences no personal detriment as a result, providing that she/he has acted in good faith throughout. If it is established that a member of staff has made a malicious or vexatious allegation, disciplinary action may be taken.

All records from the complaint/investigation should be kept secure at the school for a period of five years.

EXAMPLES OF COMMON FORMS OF HARASSMENT

The list is not exhaustive, but provides a helpful guide for all employees:

1. Racial Harassment

This is unacceptable behaviour based on racial or ethnic origin, which is unwanted, offensive and unreasonable. It can range from physical abuse to more subtle ways of causing discomfort or stress. Examples of such behaviour include:

- telling insensitive jokes related to race (not necessarily directed at an individual);
- making comments designed to ridicule different cultural beliefs or customs;
- displaying racially offensive graffiti;
- using abusive, threatening or insulting words or behaviour;
- physical violence;
- deliberate exclusion from conversations;
- playing pranks or mimicking different accents.

2. Sexual Harassment

This is unwanted and unreasonable behaviour of a sexual nature.

Such harassment more usually involves the harassment of women by men, but it can equally occur between people of the same sex and of men by women. Examples of such behaviour include:

- telling insensitive jokes of a sexual nature;
- making provocative suggestions or pressing people to accept unwelcome invitations;
- displaying pornographic or suggestive material, including computer imagery and software;

- lewd, suggestive or over-familiar behaviour (eg touching, patting, whistling);
- insults or ridicule of a sexual nature;
- speculation about a person's private life and sexual activities;
- threatened or actual physical violence;
- suggestions that sexual favours will enhance career and training opportunities.

3. Harassment Based on Disability

This is conduct that is insulting and derogatory, and aimed at those with some form of disability or impairment. It can occur in many different ways from physical violence and hostility to patronising and belittling behaviour. Examples of such behaviour include:

- telling insensitive and patronising jokes related to disability (not necessarily directed at an individual);
- deliberate exclusion from particular places and activities;
- use of insulting language associated with disability;
- mimicking any form of impairment;
- playing pranks on those with a form of disability or impairment;
- physical violence;
- exclusion from training and career opportunities;
- giving or denying work based on prejudicial stereotypes.

4. Other Forms of Bullying and Harassment

This is behaviour which although not racial or sexual in nature or related to disability, nevertheless seriously affects a persons well being at work.

Examples of such behaviour are:

- repeated jibes in reference to personal traits or appearance;
- invasion of privacy (e.g. stalking, peeping);
- serious incidents which create psychological distress;

- persistent pressures to become involved in antisocial or criminal behaviour;
- physical intimidation/threats;
- withholding relevant information.

COMMON EXAMPLES OF BULLYING INCLUDE:

Verbal, physical threats and intimidation;

Persistent negative comments which are destructive and unjustified rather than supportive;

Humiliating someone in front of others;

Offensive or abusive personal remarks;

Selecting one person for criticism when there is a common problem;

Removing areas of responsibility without justification;

Unjustified use of rank or position.

THE LEGAL FRAMEWORK RELATING TO HARASSMENT

1. Whilst there is no single legal definition of unlawful harassment, there are a number of statutory and common law principles which place legal duties on employers to minimise the risk of harassment and to deal appropriately with any complaints. These are:
 - a) Health and Safety at Work Act 1974;
 - b) Sex Discrimination Act 1975;
 - c) Race Relations Act 1976;
 - d) Disability Discrimination Act 1995;
 - e) Employment Protection (Consolidation) Act 1978;
 - f) Human Rights Act 1998.
2. Harassment can also be a criminal offence under the Criminal Justice and public Order Act (1994) and the Protection from Harassment Act (1997).
3. In addition to the above legislation, the European Commission has issued a recommendation concerning the dignity of people at work. Their recommendation suggests that Member States should take action to promote awareness of those circumstances when conduct of a sexual nature, or other conduct based on sex, affecting the dignity of women and men at work is unacceptable. They also wish to highlight that in certain circumstances, such conduct may be contrary to their principle of equal treatment contained in Articles 3, 4 & 5 of the Equal Treatment Directive of 1976.
4. Serious cases of harassment may lead to criminal claims of assault against an employee, and/or civil claims for negligence or breach of contract against the employer.
5. In Common Law, employers may be sued for damages where an employee suffers personal injury because of bullying, unless they can demonstrate that the perpetrator acted “outside the course of his employment”.
6. Under the Employment Rights Act (1996), an employee may complain to an Employment Tribunal of constructive dismissal in circumstances where workplace bullying has led him/her to leave his/her employment with an organisation.