



The Orchard Vision: *Inspiring Success*
Values: *Determination, Courage, Respect*

The Orchard Harassment and Bullying Policy 2021

NEU Harassment and Bullying- School model policy

Reviewed and agreed by The Orchard School April 2021

This harassment and bullying model policy is comprised of two sections: a model policy statement and a model procedure for dealing with complaints of harassment and bullying. Part 1, the policy statement, contains the employer's commitment to preventing and tackling harassment and bullying and covers key definitions and the legal framework. In their harassment and bullying policy, the employer must be clear about how complaints of this nature will be addressed. This can be via a specific harassment and bullying complaints procedure, and part 2 of this document contains the NEU model for this. Where the employer does not prepare a separate complaints procedure for harassment and bullying, cases should be addressed via the grievance procedure and NEU negotiators can refer to the NEU model grievance policy, available at - neu.org.uk/advice/neu-grievance-model-policy

PART 1: Policy statement

1. Introductory statement

The Orchard School believes that all of its employees have the right to a safe working environment free from intimidating and insulting behaviour, and recognises its legal obligations to provide such an environment.

Harassment and bullying of employees can have serious consequences for individuals and for schools. The Orchard School prohibits all forms of bullying and harassment and is committed to taking appropriate steps to eliminate such behaviour from the school.

This policy applies to all Orchard School employees, including those employed on a temporary basis, or via an agency, and the school will ensure that all employees are made aware of the policy and how to access a copy. The Orchard School is committed to providing a comprehensive training programme for all employees and members of local governing bodies on harassment, bullying and equality issues.

Appropriately qualified members of staff, such as managers, may be required to act as investigating officers or undertake another role as part of the harassment procedure. Resources will be made available centrally to enable such staff to receive training and to carry out their investigating duties.

In accordance with the Equality Act 2010 and the public sector equality duty to eliminate discrimination and advance equality of opportunity, monitoring of the procedure will be undertaken to collect information such as: the type and frequency of complaints arising; the proportion of complaints resolved satisfactorily; any problem areas to be addressed; and any

additional training required. This information will be provided to recognised trade unions to allow for constructive discussion.

2. Introductory statement by the governing body

In adopting this policy and procedure, the governing body recognises its responsibility for ensuring that the policy is implemented and will encourage employees who consider that they have been harassed or bullied to use the procedure.

3. Harassment and bullying in the workplace

The Orchard School is committed to the elimination of all forms of harassment and bullying of its employees in connection with their employment. Harassment may be unlawful under the Equality Act 2010, and both bullying and harassment affect working conditions, impact on health and safety, and undermine equality at work. They undermine attempts to improve education provision for all children because they:

- present an unacceptable model for children's own behaviour
- cause increased incidence of stress-related illness among teachers
- lead to high levels of staff turnover in individual schools
- demoralise all staff working in schools where their colleagues are bullied by management or other members of staff.

All staff are prohibited from harassing or bullying colleagues in the workplace and are expected to comply with this policy. Breach of this policy is a disciplinary offence and appropriate disciplinary action, including dismissal for serious offences, will be considered if any employee fails to adhere to this policy.

4. Definition of harassment

Harassment is defined by the Equality Act 2010 as "unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment".

Harassment in relation to one or more of the following protected characteristics is unlawful: age, disability, gender reassignment, race, religion and belief, sex and sexual orientation.

However, The Orchard School is aware that harassment may also occur that is not in relation to a protected characteristic, and all forms of harassment will be dealt with via this policy and procedure.

Harassment can interfere with a person's work performance and undermine job security.

Harassment may be either intentional or unintentional. The key feature is its effect on the person rather than the motive of the perpetrator. Harassment can take many forms. These include:

- the display or distribution of offensive material, graffiti or badges
- non-verbal abuse such as offensive gestures and body language
- inappropriate comments about someone's appearance
- intrusive questioning about someone's private life
- verbal abuse such as suggestive remarks, 'jokes' and name calling
- physical contact such as unnecessary touching
- offensive messages or materials received via email or online
- threatened or actual physical abuse or attack.

5. Definition of bullying

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 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 the best means of managing relationships. Common examples of bullying include allocating additional workload, withholding work responsibility, changing priorities and objectives unreasonably, imposing impractical deadlines, excessive and unreasonable supervision, or unnecessary invoking of disciplinary or capability procedures. Bullying may also involve abuse and undue criticism in front of colleagues and pupils. Bullying can also be in the form of 'cyberbullying' whereby the methods used to undertake the bullying behaviour are through information and communications technology, particularly mobile phones and the internet. The common feature of the different forms of behaviour that constitute harassment and bullying is that it is behaviour unwanted by the victim.

6. Harassment, bullying and the law

The Equality Act 2010 provides a legal framework for employees to be protected from unfair treatment and for The Orchard School to promote equality and fairness in the workplace. Harassment is likely to breach the law if undertaken in relation to one or more relevant 'protected characteristics' (age, disability, gender reassignment, race, religion and belief, sex and sexual orientation), and this can be used effectively to tackle harassment at work. Harassment will be deemed to be taking place if the victim is perceived by the harasser to have a protected characteristic, whether they actually have it or not. A person may also be harassed because of their association with someone who has a protected characteristic. For instance, a person might be harassed because of the sexual orientation of one of their family members.

Under the Act, The Orchard School as employer may be asked to answer for its own conduct and the conduct of its staff, as claims can be made against both the harasser and their employer.

Victimisation in the form of retaliation for making or supporting a claim of harassment may also constitute unlawful behaviour under the Equality Act 2010, and behaviour that constitutes victimisation will not be tolerated.

7. Harassment and bullying of employees by members of the school community Employees may experience bullying or harassment from governors, parents and other visitors to the school, as well as harassment from pupils or colleagues. It is not part of a teacher's or Support Staff duties to accept or tolerate such behaviour.

All such complaints of harassment made by employees will be investigated, and The Orchard School will provide support to any employee who is the victim of harassment by a member of the public in the course of their employment.

Part 2: Harassment and bullying complaints procedure

1. Introduction

This harassment and bullying complaints procedure reflects:

- the Equality Act 2010 and subsequent public sector equality duty
- the provisions of the Employment Act 2002 (Dispute Resolution) Regulations 2004 which require that discipline, dismissal and grievance procedures include certain minimum statutory steps
- the provisions of the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice on disciplinary and grievance procedures.

In the application of this procedure, the term harassment includes workplace bullying. Work-related harassment that takes place outside the workplace will also fall within the remit of this policy and procedure.

The procedure contains two stages through which complaints can be pursued:

- a preliminary informal stage where the alleged harasser is made aware that their behaviour is regarded as unacceptable by the complainant. This is to allow an opportunity to resolve the situation without recourse to the formal procedure.
- a formal stage involving a harassment and bullying procedure and an investigation of the complaint which, if found to be substantiated, could lead to a recommendation that disciplinary action be taken.

Many complaints can be resolved at the informal stage but it is recognised this will not be appropriate in all cases.

On occasion, counter-allegations may be made by persons against whom complaints are made. Both parties' complaints will be dealt with as separate complaints (ie with separate investigations and hearings) under this procedure.

2. Help and support

The following sources of help and advice are available to employees who complain of harassment and bullying.

- Trade unions: members of trade unions will be able to seek advice and assistance from a union representative.

- ACAS helpline: ACAS provides a free helpline for assistance on a variety of employment issues. ACAS provides confidential advice to any employees who are experiencing bullying or harassment.

Advice from trade unions or external sources may also be sought by persons against whom complaints are made and by employees who are concerned about the apparent harassment of others but who may not have been subjected to harassment themselves.

3. Informal stage

Under the informal stage, individuals who feel that they have been subjected to harassment should inform the other person(s) involved, if appropriate and they feel able to do so, that their conduct is regarded as unwelcome, offensive and/or interfering with work. The aim of the informal stage is to allow an opportunity for resolution without recourse to the formal procedure.

Where the complainant feels uncomfortable in approaching the other individual directly, assistance may be sought from a trade union representative, colleague or a member of the school management team, who will make the initial approach if required. If assistance from a member of the school management team is sought in making such an approach, this action will not be considered to be a disciplinary sanction.

This preliminary stage does not detract from the sensitivity or the potential seriousness of the situation. Rather, it allows complainants greater flexibility in choosing the most appropriate option they wish to follow having sought advice.

4. Formal stage

The complainant may choose to make a formal complaint under the harassment and bullying procedure if:

- the informal stage is not successful in resolving the situation
- the complainant does not wish to raise the matter in this way
- it is otherwise considered inappropriate by the complainant due, for example, to the seriousness of the complaint.

A member of management or the human resources (HR) department can initiate the harassment and bullying procedure on becoming aware that harassment may have taken place.

5. Invoking the harassment and bullying procedure

A formal harassment and/or bullying complaint must be registered in writing, setting out details of the most recent incident(s), the name of the person(s) against whom the complaint

is made, and any other relevant information. If the procedure has been initiated by management, any such details which are available must be listed, indicating whether there is any direct personal knowledge of the events. If the employer is contemplating taking disciplinary action against or dismissing the employee, the formal disciplinary or dismissal procedure must be followed. Employees must be encouraged to record their complaint as soon as possible after the incident.

One copy of the complaint must be sent to the head teacher; one copy to the HR department who must record receipt of the allegation; and, if appropriate, one copy to the person against whom the complaint is made.

6. Initiating the investigation

On receipt of the complaint, in all cases, the head teacher will appoint an investigating officer and decide whether any immediate action should be taken, eg suspension pending investigation.

Where a complaint involves the head teacher, they shall not be involved in any consultation or decision-making with regard to the complaint or investigation. The investigation will be undertaken by an appropriate person (external investigator or member of the governing body) as appointed by the chair of governors.

The investigating officer must not have had any previous dealings with the case and should be impartial. Investigating officers must be at an appropriate level of seniority and must have sufficient experience and/or training to allow a thorough understanding of relevant issues. Investigating officers must be available to conduct the investigation within the timescale below.

If immediate action is taken, for instance suspension on full pay pending investigation, the HR department will be formally notified at once, or at the latest within three working days of the decision being made. Where no such action is taken, consideration will be given to whether any working arrangement affecting the two parties involved should be altered during the course of the investigation, for example if either party is the immediate supervisor of the other.

At the same time, the person against whom the complaint is made will be informed by the head teacher of the nature of the complaint lodged against them and of the availability of advice and support. Any immediate action taken will be noted in that letter.

7. Investigation

The investigation will be carried out by the investigating officer without undue delay and will in all cases be completed within 15 working days of the complaint being registered unless there are exceptional circumstances to prevent this.

The investigation will include a formal meeting between the investigating officer and the complainant to discuss the complaint. The complainant is entitled to be represented by their trade union representative, work colleague, or friend at this meeting and will have an opportunity to make oral submissions. Both parties will have the right to be accompanied during investigatory interviews by a trade union representative, work colleague or friend. Everyone involved, including any witnesses, will maintain strict confidentiality throughout the investigation. The complainant and the person(s) against whom the complaint is made and any witnesses will be interviewed separately and detailed record of all interviews must be kept.

The investigation will be carried out thoroughly, impartially and with due sensitivity to the nature of the complaint. The key aim of the investigation will be to establish the facts.

All parties will be kept informed simultaneously about the progress of the investigation.

Counselling and support will be available to all those affected by the investigation and may be provided by a trade union or from an appropriate external body via the employer.

8. Report of the investigating officer

The investigation will conclude with a written report by the investigating officer to the head teacher (unless the head teacher is the subject of the complaint in which case the report will go to the chair of governors). This will include any evidence of whether the alleged conduct took place, and whether that conduct had the purpose or effect of violating the complainant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant. The report could include: a) a recommendation to institute disciplinary action because there is evidence to support that harassment had taken place b) a recommendation to take action other than disciplinary action on the basis that it is not sufficiently serious to warrant formal disciplinary action. This could include:

- an instruction to the harasser to stop the behaviour which caused the complainant to feel harassed
- an instruction to the harasser to apologise to the complainant, and/or
- a requirement to receive 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 take no further action on the complaint. This will be appropriate if the investigating officer has been unable to find evidence relating to the complaint or that there is evidence to suggest that alleged behaviour did not take place. Where there is evidence that the alleged behaviour did not take place or that the complaint is malicious, the investigating officer's report will recommend further investigation of the circumstances which may lead to disciplinary action against the complainant.

9. Consideration of investigating officer's report

The head teacher, or chair of governors if the head teacher is the subject of the complaint, will consider the findings and recommendation of the investigating officer. The complainant and the person(s) against whom the complaint is made will receive a letter setting out the findings and recommendation of the investigating officer and the decision taken. The letter to the complainant will offer the right of appeal against the recommendation of the investigating officer and the decision taken.

In any case, where the head teacher decides not to accept the recommendation of the investigating officer, the HR department must be consulted and provided with written reasons for the decision. Where the head teacher decides to accept a recommendation that disciplinary action should be instituted, the disciplinary procedure will be commenced without delay.

10. Appeal

If the complainant wishes to appeal, he or she will inform the head teacher in writing of the grounds of appeal within ten working days of receipt of the outcome letter detailed above.

The letter will be forwarded to the chair of governors, unless they were responsible for making the decision, in which case the letter will be dealt with by another member of the governing body, who will acknowledge receipt of the appeal, in writing, within five working days and will arrange for a meeting to take place within a further ten working days.

The appeal must be heard by three members of the governing body who have previously had no dealings with the case. At this meeting, the complainant is entitled to be represented by a trade union representative or work colleague and will have an opportunity to make oral submissions at the meeting. The panel will consider the employee's reasons for raising an appeal and the details of their original complaint. The panel will deliberate following the meeting, and the complainant and the alleged harasser will receive, in writing, the final decision of the appeals panel.

11. Where a complaint is upheld

Where it is decided that disciplinary action may be warranted, the disciplinary procedure will be followed. Where this results in a disciplinary sanction other than dismissal, wherever practicable the complainant will be given the choice of remaining in their post or being transferred to another location/position. Where the complainant opts to be transferred, this should not lead to any disadvantage in terms and conditions of employment.

Where the complainant has been absent from work during the proceedings, they should be assisted in resuming their duties by the line manager, identifying any potential problems and discussing the situation with the complainant and, where appropriate, their work colleagues. Every effort must be made to ensure the complainant returns to a harmonious working environment where they feel comfortable and become fully integrated in the workplace as soon as possible. In particular, managers must ensure that no victimisation of the complainant and/or any witnesses takes place. Victimisation may itself take a wide range of forms, from continuing but concealed unpleasantness from colleagues to adverse impact on career development, and may occur whether or not the complaint was upheld.

12. Where a complaint is not upheld

The head teacher (or, where appropriate, the nominated governor) will consider how best a continuing working relationship between the two employees can be arranged. Consideration may be given, where practicable, to the voluntary transfer of one of the employees concerned or to rescheduling work rather than requiring them to continue to work together in a situation found to be unacceptably difficult.

Where the complaint is found to be untrue and malicious, the head teacher (or, where appropriate, the nominated governor) may determine that disciplinary action should be taken against the complainant.

13. Right to appeal disciplinary penalty

Where the complaint is upheld by the investigating officer and disciplinary action is instituted which results in a disciplinary penalty, the alleged harasser has a right of appeal as laid down in the school's/trust's disciplinary procedure.

14. Equality monitoring

To ensure that we are meeting our public sector equality duty, we will monitor annually the impact of this policy by reference to the protected characteristics of staff (age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex and sexual orientation). The results will be shared (anonymised where appropriate) with the recognised trade unions.

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Reviewed and agreed by The Orchard School April 2021