

# THE BIRMINGHAM FEDERATION OF MAINTAINED NURSERY SCHOOLS

*Allens Croft Nursery School*

*Kings Norton Nursery School*

*Lillian De Lissa Nursery School*

*Adderley Nursery School*

*Jakeman Nursery School*

*Selly Oak Nursery School*

*St Thomas Centre Nursery School*

*Gracelands Nursery School*

*Shenley Fields Nursery School*

*Weoley Castle Nursery School*

*Newtown Nursery School*

*Highfield Nursery School*

## Dignity at Work Policy

### 1. INTRODUCTION

1.1 The Governing Body of Allens Croft, Jakeman and Shenley Fields Nursery Schools has adopted this policy and procedure in order to promote positive working relationships and equal opportunities in employment so that all employees feel free to develop their abilities to the full. It acknowledges its legal obligation to promote a working environment free from harassment, including its responsibilities under the racial, disability and gender equality duties, and for training employees in their responsibilities under the law (see Appendix 1).

1.2 The Governing Body will ensure that prompt and appropriate action is taken to deal with any complaints which come under the purview of this policy, including where there is a possibility of victimisation for making or otherwise being involved in a complaint. It expects all those dealing with complaints to make objective decisions, without fear or favour. It will not tolerate harassment of any kind and in relation to harassment of or by employees will require the head teacher to act in accordance with this procedure, including invoking the disciplinary procedure when appropriate.

1.3 This policy reflects the Birmingham City Council Policy and Procedure, agreed with the Trade Unions at the Personnel (Joint Consultations) Sub-Committee (23rd June 1998). It recognises that discussions with the Trade Unions may lead to recommended amendments from time to time and attempts to reflect that within this policy.

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1.4 This policy is adopted with immediate effect.

1.5 This policy and procedure will be applied in accordance with statutory regulations for the governance of the school which may apply from time to time and in accordance with the procedures and delegations adopted by the Governing Body under those regulations.

1.6 The Governing Body is responsible for ensuring that the policy and procedures are implemented as part of the normal arrangements for the management of the school. The policy and procedure must be drawn to the attention of all staff at the school. All employees must comply with this policy and procedure; failure to do so may lead to disciplinary action.

1.7 The Head Teacher and Governing Body are responsible for the elimination of harassment and bullying of staff employed at the school and therefore for the conduct of any investigation which takes place after an allegation has been made. The role of the Local Authority is to provide help and support to allow schools to identify unacceptable or discriminatory behaviour falling within the terms of this policy, to deal with it effectively, thereby enabling the working environment to be a happy and fulfilling place.

1.8 Any employee who is subject to harassment during his/her employment may initiate action under this policy. The Trade Unions have a key role to play at all stages when complaints are made and staff have a right to consult their Union at any stage of the process.

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## **2. THE PURPOSE**

2.1. The purpose of this policy and procedure is to deal with cases of alleged harassment by employees.

## **3. THE POLICY**

3.1 The Local Authority and the Governing Body want to promote positive working relationships where all employees feel free to develop their abilities to the full. They are committed to achieving a working environment free from harassment. This policy covers not only those aspects of harassment for which there is statutory protection but also bullying (see Appendix 1).

3.2 The Governing Body will not tolerate harassment of any kind and in relation to harassment of or by employees will require the Head Teacher to act in accordance with this procedure, including invoking the disciplinary procedure when appropriate.

3.3 Harassment is unwanted conduct affecting the dignity of women and men at work. This can include unwelcome physical, verbal and non-verbal conduct. It may be specifically prohibited by law, as is harassment based on race, sexual orientation, gender, disability, religion or age. It may arise from other prejudices or simply from one person's conduct towards another.

3.4 Harassment creates an intimidating and unpleasant atmosphere at work which may affect an employee's health, safety and welfare and prevent employees contributing effectively to the organisation. The Local Authority and the School Governors take any allegations or complaints of harassment seriously and through

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this policy provide formal and informal methods for resolving the problems it creates. Complaints will be handled sensitively and employees will be protected against victimisation for making or being involved in a complaint.

4.1 Harassment can amount to unlawful discrimination under the Sex Discrimination Act 1975, the Race Relations Act 1976 (and Race Relations (Amendment) Act 2000), the Disability Discrimination Acts 1995 and 2005, the Equality Act 2006, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003 and the Employment Equality (Age) Regulations 2006. Claims of harassment under this legislation can be brought against the alleged harasser and against the employer. An employer is liable for the discriminatory acts of employees acting in the course of their employment, whether or not they are done with the employer's knowledge or approval unless they are able to show that they took all reasonably practical steps to prevent employees carrying out unlawful discrimination. Employers are expected to have taken steps to prevent harassment. Additionally, harassment can be a crime (the Criminal Justice and Public Order Act 1994 and the Protection from Harassment Act 1997) – See Appendix 1.

## **5. THE PROCEDURE FOR DEALING WITH COMPLAINTS**

5.1 This procedure is designed to deal with allegations and incidences of harassment between employees of the school. Other complaints should be raised through the appropriate process. (See Appendix 2).

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## 5.2 Informal Action

5.2.1 The purpose of the informal stage is to bring the matter to the attention of the alleged harasser and to give that person an opportunity to change behaviour. At any stage in this procedure the employee may contact his or her Trade Union. Complaints should normally be made by the employee experiencing the alleged harassment, but an employee who witnesses behaviour which he or she deems inappropriate and possibly constituting harassment or bullying should initially discuss the matter with the person he or she thinks is being harassed. The decision whether to pursue the matter further normally remains with the person subjected to the alleged harassment but in the event of repeated harassment of the same person or a single incident of extreme seriousness the witness to such behaviour should report the matter to his or her line manager or head teacher or in the cases of harassment by the head teacher to the chair of governors (the chair of governors will take advice from the authority through Schools Management Support in such a case). It could also be appropriate at this stage for the witness to discuss the situation with his or her Trade Union who can offer advice, especially if the employee is reluctant to make a complaint about the head teacher to the chair of governors.

5.2.2 It is preferable for all concerned to try to resolve matters informally if at all possible. This is likely to produce solutions, which are speedy, effective and restore positive relationships in the workforce. It will also help to minimise embarrassment and the risk of breaching confidentiality. Employees are encouraged to attempt to resolve perceived harassment informally before using the formal stage of these procedures. However, the benefits of informal solutions should not discourage employees subject to harassment from using formal procedures where they prefer that option.

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5.2.3 Wherever possible, employees who believe that they are subject to harassment should tell the person who is causing the problem that the conduct in question is unwanted and/or offensive and must stop. This is a positive step and may help to resolve the situation.

5.2.4 Individuals may wish to ask for support in bringing the matter to someone's attention. This should be a matter of personal choice but could include his or her line manager, a colleague, or Trade Union representative. Such approaches may be particularly helpful where the complaint is about the employee's head teacher or line manager.

5.2.5 At this stage, so as not to prejudice any subsequent, formal action, governors should not be approached.

5.2.6 People supporting a complainant may also act as intermediaries, or may be able to suggest a suitable intermediary in a particular case. An intermediary should be able to explain perceptions to the parties concerned without passing judgments and may be able to suggest solutions.

5.2.7 Mediation may also be appropriate at this stage and a request should be made via the line manager or head teacher. The authority offers a mediation service through Schools Plus. The role of mediator should be separate from that of investigator or any person offering support. Experience has shown the effectiveness of mediation in resolving complaints without recourse to formal procedures, because their adversarial nature may heighten distress even though they succeed in stopping the harassment.

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## 5.3 Consideration of further action.

5.3.1 Formal proceedings may follow and be appropriate where a previous attempt at informal resolution has proved unsuccessful. Furthermore, there will be some instances where the seriousness of the complaint warrants formal action, and possible criminal proceedings.

5.3.2 All parties are entitled and encouraged to keep a confidential written record of incidents and actions taken throughout this procedure.

## 5.4 Formal Action

5.4.1 If the employee decides to raise the matter formally then contact should be made with the Head Teacher. The complainant should identify the harasser and the behaviour which is unacceptable. The allegation should be put in writing and sent to the head teacher. If the complaint is about a Head Teacher see section 7.3.

5.4.2 The Head Teacher in exceptional circumstances (e.g. where there are Health and Safety issues) may request both parties to agree to remain off work, as paid leave of absence, until advice from the Employee Relations Team has been received on how to proceed.

5.4.3 The Head Teacher will then follow the procedure outlined below immediately:

- a) acknowledge the complaint in writing (and refer to the date of receipt) and inform the employee that he or she will be invited to attend a meeting to discuss the complaint.

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- b) inform and seek advice from the Employee Relations Team.
- c) inform the alleged harasser of the nature of the allegation in writing, explaining that he or she will be interviewed as part of the investigation and is entitled to make a written statement, also setting out the possible outcomes of the investigation (see 5.4.11 below).
- d) consider whether to re-arrange work so that contact between the parties is minimised.
- e) offer mediation and make arrangements where this is agreed by both parties.
- f) if mediation is not agreed or is unsuccessful find an appropriate person to investigate. In small schools it may be difficult to find a senior employee not already aware of the alleged harassment. If a suitable investigator cannot be found within the school the head teacher is advised to contact the Local Authority (through the Schools Support Manager or the Employee Relations Team) with a view to securing the services of an appropriate, trained investigator external to the school.
- g) draw up terms of reference and provide relevant information and documentation for the person appointed as investigator (the Schools Support Manager or Employee Relations Team can advise) and ask him or her to investigate the matter formally (at this stage it is appropriate to consult Appendix 5 for guidance on how to conduct an investigation and advice should be sought from the Employee Relations Team). As part of the terms of reference the head teacher should draw attention to any aspects which should be disregarded for the purposes of the investigation. Where necessary the head teacher should identify a person in the school to provide a link for the investigator.



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5.4.4 Where an investigation takes place, the Executive Head Teacher should ask all relevant staff to co-operate with the investigation.

5.4.5 The investigation must be objective and handled with sensitivity and due respect for the rights of both the complainant and the alleged harasser, who will both be entitled to representation by a trade union, colleague or friend of their choice.

5.4.6 If there are witnesses to the allegations they should be interviewed by the investigator and will be expected to provide a signed and dated statement.

An employee making an allegation of harassment will be encouraged to name those witnesses whom he or she would wish to be interviewed and the investigating officer must make every effort to ensure such interviews take place.

5.4.7 The investigation should be completed as quickly as possible, and within the following time-scales: 5 working days to identify an investigating officer, 20 working days for the investigation to be completed and 5 working days to produce the report setting out the findings of the investigation. The Executive Head Teacher is responsible for ensuring that these timescales are met and if it proves impossible to adhere to these time-scales then the Executive Head Teacher should seek advice from an Employee Relations Officer, who will consider what action can be taken to expedite the investigation.

5.4.8 When the investigation has been completed the Executive Head Teacher should meet with the investigator to determine whether the report fulfils the remit for the investigation and obtain any necessary clarifications. In very exceptional circumstances the Executive Head Teacher may decide to re-open the investigation or arrange for a fresh investigation. In such cases both the complainant and the alleged harasser will be informed of the Executive Head

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teacher's decision and the reason for it. Once the Executive Head Teacher is satisfied with the investigation process and the report he/she will then formally receive the report and become responsible for deciding on appropriate action.

5.4.9 The Executive Head Teacher has three options:

- (a) to take no further action;
- (b) to acknowledge a gap between intentions and perceptions and reaffirm the school's expectations as far as employees' conduct is concerned (arranging training or support where appropriate); or
- (c) to institute disciplinary proceedings.

If the Executive Head teacher is contemplating disciplinary action, the person against whom the complaint has been made is entitled to respond in writing and/or by an interview before a decision is taken to refer the matter to a disciplinary hearing.

If that person chooses to respond in writing, the Executive Head Teacher may write back to seek clarification on certain points and should discuss them with the investigator. If it is decided to proceed to a disciplinary hearing, the complainant will be advised that the institution of disciplinary proceedings marks the end of the anti-harassment procedure in this case, subject to any appeal by the complainant. (In accordance with the statutory Dispute Resolution Regulations the complainant should be advised in writing of the right of appeal (see below) even though it is unlikely that the complainant will be dissatisfied with the proposed course of action).

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The report will be presented as evidence in the disciplinary case but will not be released to the complainant, because of the confidentiality of disciplinary proceedings. (Release of the report to the complainant might also foster collusion amongst witnesses.) The complainant may be asked to appear as a witness in those proceedings. When the disciplinary proceedings have been completed the complainant will be advised in a meeting of their completion and informed whether or not a disciplinary sanction has been imposed (though not of the details of the case or the level of any sanction imposed).

5.4.10 If no disciplinary action is contemplated the Executive Head Teacher will confirm in writing the time and place for separate meetings with the complainant and the alleged harasser. This shall be done within five working days from the Executive Head Teacher's formal acceptance of the investigation report, unless this is impossible due to sickness or other unavoidable absence, in which case the meeting will be rearranged. The letter inviting the parties to their respective meetings should also confirm that each has the right to be accompanied in the meeting by a friend or other representative of his or her choice. The authority's recommended protocol for the conduct of meetings will apply.

5.4.11 In each of the separate meetings the Executive Head Teacher will provide a written summary of the findings of the report, with due regard to the rights of third parties under the Data Protection Act. The Executive Head Teacher should confirm that witnesses named by both the complainant and the alleged harasser have been interviewed by the investigator, but not disclose which particular piece of information has been given by which witness(es). If there were no witnesses and the report deals only with statements from the complainant and the alleged harasser then the full report should be released to both parties. (If the Executive Head Teacher needs assistance in deciding how much of the report can be shared with the parties a request should be

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made to Employee Relations for advice, which may be referred to one of the City Council's

special teams for the Freedom of Information Act.) The Executive Head Teacher should then explain either why no further action is proposed or what training or other support is to

be arranged to ensure that the conduct prompting the complaint is not repeated. Mediation may be offered again to both parties. The complainant should be informed of the right of appeal, both at the meeting and subsequently in writing.

## 5.5 Malicious Allegation

The fact that an allegation has not been substantiated does not mean that it is considered to have been malicious. No action will be taken against anyone who makes an allegation in good faith, reasonably believing it to be true, even if the allegation is not subsequently confirmed by the investigation. In order for an allegation to be deemed malicious there would have to be independent corroboration, for example, evidence of the falsification of information. Nevertheless, there may be exceptional cases where the evidence leads the investigator to conclude that the allegations may have been malicious. In such cases the investigator should refer his/her concerns to a Principal Employee Relations Officer for further advice. If, following further investigation, which must include a further interview with the employee making the allegations, the Principal Employee Relations Officer shares this view then all parties will be informed in writing including a statement that allegations deemed to be malicious could lead to disciplinary proceedings.

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## 6 APPEAL

6.1.1 Any employee who has made a formal complaint of harassment has the right of appeal. The head teacher will inform the complainant of this right after he or she has decided how to respond to the complaint of harassment and notified both the complainant and the alleged harasser of that decision. The complainant will be required to submit any appeal to the clerk to the Governing Body within ten working days of this notification. The appeal will be to the appeal committee of the Governing Body.

6.1.2 The complainant should also be informed that, as part of this policy, he or she may request referral of the case to an independent review Body with a constitution and terms of reference as set out in Appendix 3. An appellant wishing to exercise that right should ask for an independent review when submitting the appeal to the clerk to the Governing Body. Within five working days of receiving such a request the clerk will refer any request for an independent review to the Local Authority (through the appropriate Schools Support Manager). If there is to be an independent review the clerk will delay the appeal hearing until the independent review Body has reported, but should notify the members of the appeal committee that a hearing will be required in due course. The appellant should be given at least fifteen days' notice in writing of the date, time and venue of the appeal hearing. The clerk to the Governing Body will advise the appellant of the procedure for the appeal hearing, reminding the employee of the appellant's rights at the hearing, including the right to be accompanied by a friend or representative of his or her choice, and the action which the appeal committee may take. The authority's recommended protocol for the conduct of meetings will apply.

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6.1.3 If a review Body is appointed it should complete its work as quickly as possible, and within the following time-scales: 20 working days for the investigation to be completed and 5 working days to produce the report setting out the findings of the investigation. If the Review Body finds difficulty in meeting these time-scales it should advise the appeal committee, appellant and alleged harasser accordingly, with an explanation and proposals for dealing with the delay. The Review Body will submit its written report to the clerk to the Governing Body for consideration by the appeal committee, which will consider those findings together with the report of the original investigation, the decision taken by the Executive Head Teacher (or chair of the Governing Body as the case may be), and representations from the appellant and the alleged harasser. In preparation for the appeal hearing the clerk to the Governing Body will send to the interested parties copies of the original investigation and of the Review Body's report (with both being edited to preserve the rights of third parties under the Data Protection Act in accordance with advice obtained by contacting the Employee Relations Team). The parties to the case should exchange any written representations they wish to present at the appeal at least five days before the hearing.

6.1.4 The procedure for an appeal hearing is set out in Appendix 6. The appeal committee will have regard to any guidance issued from time to time by the Local Authority on conducting an appeal hearing. At the appeal hearing the appellant will be invited to state his or her case and the Executive Head Teacher (or Chair of the Governing Body or Schools Support Manager on behalf of the chair as the case may be) will have the opportunity to put the case for the decision taken on receipt of the report of the original investigation. Both employees (the appellant and the alleged harasser or their representatives) will have the opportunity to

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comment on any new evidence arising during the appeal, including the report of the independent review Body, before any decision is taken.

6.1.5 The appeal committee may dismiss the appeal, uphold the appeal or direct the Executive Head Teacher or the chair of the Governing Body to modify the action which he or she proposed to take to resolve the grievance. If it is decided to proceed to a disciplinary hearing, the appellant will be advised that the institution of disciplinary proceedings marks the end of the anti-harassment procedure in this case.

6.1.6 The appeal committee may announce its decision in person to the appellant and the alleged harasser or subsequently in writing as it may determine. An oral announcement shall be confirmed in writing by the clerk to the Governing Body within ten working days of the hearing.

## 7 EXECUTIVE HEAD TEACHERS

Informal stage

### 7.1 Alleged harassment of Executive Head Teachers

Executive Head Teachers who are harassed should seek advice from their own professional association and from a Schools Support Manager, who will make appropriate recommendations to try to resolve the matter without the need to move to the formal stage of the procedure. However, the decision as to whether or not to move the formal stage will rest with the Executive Head Teacher.

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## 7.2 Alleged harassment by Executive Head Teachers

It is recognised that an employee who feels that he or she has been harassed by the Executive Head Teacher may be reluctant to approach the Executive Head Teacher directly and may therefore prefer to make a formal complaint. An employee in this position may wish to seek the advice of his or her professional association. Although complaints should normally be made by the employee experiencing the alleged harassment, an employee who witnesses behaviour which he or she deems inappropriate and possibly constituting harassment or bullying should initially discuss the matter with the person he or she thinks is being harassed. The decision whether to pursue the matter further normally remains with the person subjected to the alleged harassment but in the event of repeated harassment of the same person or a single incident of extreme seriousness the witness to such behaviour should report the matter to the chair of governors (the chair of governors will take advice from the authority through Schools Management Support in such a case). It could also be appropriate at this

stage for the witness to discuss the situation with his or her Trade Union who can offer advice, especially if the employee is reluctant to make a complaint about the Executive Head Teacher to the Chair of Governors.

Formal stage

## 7.3 Complaint from an Executive Head Teacher



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An Executive Head Teacher wishing to make a complaint should put it in writing, identifying the harasser and the behaviour which is unacceptable, to the chair of governors. The chair will acknowledge the complaint in writing and will immediately seek advice from a Schools Support Manager, who will inform the Executive Head Teacher that he or she will be invited to attend a meeting to discuss the grievance. If the complaint concerns the chair of governors the Executive Head Teacher may make the complaint directly to a Schools Support Manager. The Schools Support Manager should refer the matter to a designated officer, who will arrange for the matter to be investigated. The procedure outlined in Section 5.4 should be followed as appropriate with the actions taken by the head teacher under that section being taken in this case by the chair of governors, or by the Schools Support Manager, according to the circumstances of the case. It must be borne in mind that the need to maintain impartiality is paramount.

## 7.4 Complaint against an Executive Head Teacher

An employee wishing to make a formal complaint against an Executive Head Teacher should put it in writing to the chair of governors. However, if an employee is reluctant to complain to the chair of governors about the Executive Head Teacher he or she may take the complaint in confidence directly to a Schools Support Manager, but before doing so is recommended to seek advice from his or her trade union or professional association. The Schools Support Manager will interview the complainant with a view to assessing whether the complaint merits further investigation before advising the complainant that no steps can be taken without naming him or her. The chair of governors will refer a formal complaint about the Executive Head Teacher to an appropriate Schools Support Manager who will arrange for the matter to be investigated. In addition the Chair of Governors in conjunction with the Schools Support Manager will immediately:

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a) acknowledge the complaint in writing (and refer to the date of receipt) and inform the employee that he or she will be invited to attend a meeting to discuss the complaint

b) inform and seek advice from the Employee Relations Team

c) inform the Executive Head Teacher as the alleged harasser of the nature of the allegation in writing, explaining that he or she will be interviewed as part of the investigation and is entitled to make a written statement, also setting out the possible outcomes of the investigation

c) consider whether to re-arrange lines of responsibility so that contact between the parties is minimised

d) offer mediation and make arrangements where this is agreed by both parties.

7.5 The procedure outlined in Section 5.4 should be followed as appropriate. The complainant must be informed in writing that he or she will be invited to attend a meeting to discuss the grievance. It must be borne in mind that the need to maintain impartiality is paramount. The complainant should seek the advice of his or her trade union. At the conclusion of the investigation (see the guidance in 5.4 on timescales) the investigator will present his/her findings, with a recommendation, if appropriate, to the Schools Support Manager who commissioned the investigation. The Schools Support Manager will then refer the report to the chair of governors, with advice on appropriate action.

7.6 The Chair of Governors will then decide what action to take in accordance with 5.4.9 - 5.4.11 above. S/he will notify the Schools Support Manager of his/her decision in writing. The Schools Support Manager will then meet separately with

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*Shenley Fields Nursery School      Weoley Castle Nursery School      Newtown Nursery School      Highfield Nursery School*

the Executive Head Teacher and the complainant to tell them of the recommendations, the authority's advice and the intentions of the chair of governors.

7.7 There will be a right of appeal, including referral to an independent Review Body when requested, as set out in section 6.

## 8 SUSPENSION

8.1 In certain rare cases where the allegations are deemed to be sufficiently serious it may be appropriate to consider suspending the individual in accordance with the procedure set out in the School's Disciplinary Procedures. Section 4 of the Model Staff Disciplinary Procedure contains advice on the suspension of staff. It is essential to consult the Employee Relations Team for further advice if this is felt to be the case. This does not affect suspension for allegations of gross misconduct under the disciplinary procedure. A decision will have to be taken about the conduct of the investigations under each procedure in these circumstances. It may be that the investigation under the Anti-harassment policy should be held in abeyance until the outcome of the disciplinary investigation is known.

## 9 COMPLAINT AGAINST A TRADE UNION REPRESENTATIVE (ON THE STAFF OF THE SCHOOL)

9.1 Normal standards of behaviour should apply to Trade Union representatives. However, complaints against a Trade Union representative can be misconstrued as an attack on the union. In the circumstances of a complaint against a Trade Union representative employed at the school, no action should be taken until the matter has been raised with a full-time official or senior trade union representative or teacher association officer of the relevant union. In exceptional circumstances, where the substance of the complaint is sufficiently serious, it may be necessary

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to suspend a trade union representative before contact can be made with an officer or official of the union, but in such a case the matter should be raised with an officer or official as soon as possible thereafter as a matter of urgency.

9.2 The procedure set out in sections 5 and 6 (as appropriate) should be followed.

## 10 CONFIDENTIALITY

10.1 At all stages of the procedure, the importance of confidentiality will be borne in mind. Attention will be given to considering what information needs to be shared and the way in which this is done.

Date Policy Adopted: 20.10.2020

Date for next renewal: Autumn Term 2021

Signed: \_\_\_\_\_

Sean Delaney

**Chair of Governors**

Signed: \_\_\_\_\_

David Aldworth

**Executive Head Teacher**