

# **Bourne Education Trust Ending Bullying and Harassment Policy**

## **1. Introduction & Purpose of Policy**

Any reference to Bourne Education Trust, BET or the Trust within this policy incorporates all its constituent schools and leisure facilities.

The Bourne Education Trust (BET) is committed to a zero tolerance approach towards harassment and bullying. Specifically, the Trust aims to:

- Work to eliminate all forms of harassment, bullying and discrimination from the workplace;
- Build a confident and enabled workforce empowered to challenge negative behaviours;
- Create a healthy working environment which helps to minimise incidents of harassment and is based on trust, openness, respect and accountability;
- Build a workplace culture that identifies and addresses negative behaviours.

The purpose of this policy is to raise awareness of expected behaviours whilst working at, or for, the Trust to prevent harassment and provide a means of quickly and effectively resolving issues which arise so that employees can continue to work together harmoniously.

The Trust is mindful of its obligations under the Equality Act 2010 and this procedure will be applied fairly and consistently to all staff employed by the Trust. This policy covers bullying and harassment of and by employees of the Trust, contractors, governors, volunteers, agency staff and anyone else engaged to undertake work on behalf of the Trust whether by direct contract or otherwise. Where the complainant or alleged harasser is not employed by the Trust, this policy will apply with any necessary modifications in place. This policy does not apply in relation to pupils at Trust schools for whom there is a separate behaviour policy in place.

## **2. Definitions**

### **What is Harassment?**

Harassment is any unwanted physical, verbal or non-verbal conduct which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. A single incident can amount to harassment.

It also includes treating someone less favourably because they have submitted or refused to submit to such behaviour in the past.

Unlawful harassment may be related to age, disability, gender reassignment, marital or civil partner status, pregnancy or maternity, race (including, colour, nationality, ethnic or national origin), religion or belief, sex or sexual orientation. Harassment is unacceptable even if it does not fall within any of these categories.

Sexual harassment is unlawful and is unwanted conduct which is of a sexual nature.

Harassment may include, for example:

Unwanted physical conduct or "horseplay", including touching, pinching, pushing, grabbing, brushing past someone, invading their personal space, and more serious forms of physical or sexual assault.

Unwelcome sexual advances or suggestive behaviour (which the harasser may perceive as harmless), and suggestions that sexual favours may further a career or that a refusal may hinder it.

Continued suggestions for social activity after it has been made clear that such suggestions are unwelcome.

Conduct of a sexual nature such as sending or displaying material that is pornographic or that some people may find offensive (including e-mails, text messages, video clips and images sent by mobile phone or posted on the internet).

Offensive or intimidating comments or gestures, or insensitive jokes or pranks.

Mocking, mimicking or belittling a person's disability.

Racist, sexist, homophobic or ageist jokes, or derogatory or stereotypical remarks about a particular ethnic or religious group or gender.

Outing or threatening to out someone as gay or lesbian.

Ignoring or shunning someone, for example, by deliberately excluding them from a conversation or a workplace social activity.

An employee may be harassed even if they were not the intended "target". For example, an employee may be harassed by racist jokes about a different ethnic group if they create an offensive environment, or the harasser may wrongly believe the employee to have a particular protected characteristic or the employee may be associated with someone who has a protected characteristic. When deciding whether or not conduct has the effect of harassment, the perception of the other person, the circumstances of the case for example is the harasser a person of seniority, and whether or not it is reasonable for the conduct to have that effect, must all be taken into account.

### **What is Bullying?**

Bullying is offensive, intimidating, malicious or insulting behaviour involving the misuse of power that can make a person feel vulnerable, upset, humiliated, undermined or threatened. Power does not always mean being in a position of authority but can include both personal strength and the power to coerce through fear or intimidation.

Bullying can take the form of physical, verbal and non-verbal conduct. Bullying may include, by way of example:

- Shouting at, being sarcastic towards, ridiculing or demeaning others
- Physical or psychological threats
- Overbearing and intimidating levels of supervision
- Inappropriate and/or derogatory remarks about someone's performance
- Abuse of authority or power by those in positions of seniority
- Deliberately excluding someone from meetings or communications without good reason

- Legitimate, reasonable and constructive criticism of a worker's performance or behaviour, or reasonable instructions given to employees in the course of their employment, will not amount to bullying on their own.

Cyberbullying is making use of information and communications technology, particularly mobile phones and the internet, to deliberately undermine, humiliate or otherwise cause distress to the person on the receiving end.

### **What is Victimisation?**

Victimisation is subjecting a person to a detriment because he/she has, in good faith, made a complaint that someone has been bullying or harassing him/her or someone else, or supported someone to make a complaint or given evidence in relation to a complaint.

### **3. What the Law Says**

The Equality Act 2010 prohibits harassment related to age, disability, gender reassignment, marital or civil partner status, pregnancy or maternity, race (which includes colour, nationality, ethnic or national origin), religion or belief, sex or sexual orientation. Employers are meant to take reasonable steps to prevent it. Third party harassment was removed from the Act. However, it is still possible for an employer to be liable for direct and indirect discrimination involving third party harassment where they treat someone less favourably because of a protected characteristic e.g. failing to take preventative action because of an employee's gender. In addition, an employee could rely on the implied clause of trust and confidence in their employment contract when they are considering their employer's action to a response.

The Protection from Harassment Act 1997 also makes it unlawful to pursue a course of conduct which you know or ought to know would be harassment, which includes causing someone alarm or distress.

Under the Health and Safety at Work Act 1974 employees are entitled to a safe place and system of work.

Schools within the public sector must comply with the Public Sector Equality Duty (PSED). This means that when carrying out their functions, they must pay due regard to the need to:

- Eliminate discrimination, harassment and victimisation
- Advance equality of opportunity between people who have a protected characteristic and people who do not, and
- Foster good relations between people who share a protected characteristic and people who do not.
- To comply with the PSED, employers must give due regard to how taking steps to prevent third party harassment may help to eliminate discrimination, harassment and victimisation, advance equality of opportunity and foster good relations.

Individual employees may in some cases be legally liable for harassment of colleagues or third parties and may be ordered to pay compensation by a court or employment tribunal.

#### **4. Roles & Responsibilities**

Line Managers are expected to:

- Develop the appropriate skills to be responsive and empowered in dealing with unacceptable behaviours and to seek support on this through performance management as necessary;
- Follow informal and formal procedures as set out in this policy and ensure that others are aware of the policy as it applies to them;
- Take responsibility for setting standards in their team, leading by example and fostering a positive workplace culture;
- Monitor and challenge any negative behaviour in the workplace and act on any concern raised in order to prevent harassment from taking place;
- Be aware of, and seek to eliminate, any forms of systemic harassment within the workplace;
- Be approachable, open and responsive to any issues raised by employees;
- Enable all parties involved in instances of bullying and harassment to resume their work, without fear of further intimidation or fear of reprisal.

All employees, Governors, volunteers and others working on behalf of the Trust are expected to:

- Challenge any negative behaviours they witness at the earliest possible opportunity;
- Be aware of how their own behaviour may affect others and modify it if necessary;
- Treat colleagues with dignity and respect;
- Report harassment or bullying to an appropriate manager and support the School/Trust by cooperating with any investigation into complaints;
- Inform their Line Manager (or other suitable person) if they feel they are the subject of bullying or harassment, in accordance with this policy.

Employees should be aware that these standards of behaviour are not confined to normal school/working hours and the normal place of work. Allegations of cyberbullying, for example, will not be disregarded simply because the alleged perpetrator is using his/her own computer in his/her own time.

Employees should also be aware that, if found guilty of harassment or bullying, they may face disciplinary penalties, up to and including dismissal, and could be personally liable to pay compensation in the event that the victim decides to make a legal claim against them. Serious harassment can also be a criminal offence.

#### **5. Malicious or Vexatious Accusations**

Although very rare, vexatious or malicious accusations of discrimination, harassment, victimisation and bullying are extremely damaging, both to individuals and to workplace culture. Making such accusations with, for example, the aim of getting another member of staff into trouble, may lead to disciplinary action being taken against the employee making them. A complaint will not be considered vexatious, frivolous or malicious simply because it was judged to be unfounded by the investigation. This may be the case, for example, where an individual has expressed a concern based on a genuinely-

held belief that wrongdoing has taken place but the investigation subsequently uncovers no evidence of this.

## **6. Privacy & Confidentiality**

As a general rule, all matters raised under this policy will be treated in the strictest confidence, both during and after any informal or formal complaint has been made. Any investigation to be conducted into a complaint is likely to involve some level of disclosure but this will be discussed with the complainant prior to the investigation commencing. In most cases permission will be sought before information is released although there may be instances where the matter is so serious that consent is not required, e.g. where there are health and safety implications, pupils could be at risk, or where physical violence has occurred. In such cases reasons for the disclosure will be explained. Information about a complaint by or about an employee may be placed on the employee's personnel file, along with a record of the outcome and of any notes or other documents compiled during the process.

## **7. Raising a Complaint About Bullying or Harassment**

### **7.1 Introduction**

If an employee feels that he/she is being bullied, harassed or victimised, he/she should raise these concerns at the earliest stage. This may be done informally or formally as follows.

### **7.2 Informal Route**

Employees may wish to directly express their concerns to the alleged harasser, explaining the incident(s) and the impact this has had on them.

If the employee feels unable to do this, he/she may instead approach his/her line manager, trade union representative or colleague who they feel comfortable with for assistance in stopping the inappropriate behaviour. If the line manager is directly involved in the alleged bullying/harassment, the complainant may instead approach the next most senior manager. In the case of allegations involving the headteacher, this approach should be made to the chair of the local governing body. In the case of allegations involving the CEO, this approach should be made to the Chair of the Board of Trustees.

After an assessment and meeting with both the complainant and the alleged harasser, the manager will attempt to resolve the problem through initial discussions and then through monitoring the behaviour of the alleged harasser. Where a manager requires further assistance in order to achieve resolution, he/she will give consideration to mediation (internal or through the use of an outside organisation) or the temporary reassignment of either party to alternative work. The manager may also refer the matter for further investigation if he/she does not believe that informal measures are sufficient to resolve the matter in all the circumstances of the case.

This route is informal and there is therefore no statutory right to be accompanied at any meetings. There may, however, be circumstances where the support of a work colleague or trade union

representative may be beneficial and the school will not unreasonably refuse a request for such involvement on an informal basis.

### **7.3 Formal Route**

If an individual feels either that the informal route has not resolved the problem or that the situation is too serious to be dealt with informally, he/she can lodge a formal complaint in writing with their school's headteacher (or chair of the local governing body if the complaint involves the headteacher). If the individual is a headteacher or an employee of the Trust's central team (including the executive team) he/she can lodge a formal complaint with the CEO (or the chair of the board if the complaint involves the CEO). This will be dealt with in accordance with the process and timescales contained within the Trust's Grievance Procedure.

You should use the Notification of Grievance Form (Appendix A of the Grievance Procedure) to state the grounds of your complaint and the remedy that is being sought. Your written complaint should set out full details of the conduct in question, including the name of the harasser or bully, the nature of the harassment or bullying, the date/s and time/s at which it occurred, the names of any witnesses and any action that has been taken so far to attempt to stop it from occurring.

All complaints will be investigated promptly, which may include appointing either an internal impartial investigator or an external independent investigator. Consideration of whether the suspension of the alleged harasser(s) is appropriate will also be made at this stage (see also Section 9: 'Suspensions and Temporary Transfers'). All parties may be accompanied by a recognised trade union representative or work colleague during the investigation and any subsequent meetings to discuss investigation outcomes.

#### Complaint Upheld

If the complaint is upheld by the investigation findings, suitable action will be taken. This action may be informal or it may involve the instigation of disciplinary action against the harasser in accordance with the terms of the Trust's Disciplinary Procedure. In either case, this may include other management action such as behavioural coaching, managed mediation or learning objectives for the harasser. These measures are to ensure that there is effective action taken to challenge the behaviours and prevent reoccurrence in the future.

#### Complaint Not Upheld

If the complaint is not upheld, suitable steps will be taken to ensure that both the complainant and the alleged harasser are able to return to normal working practise.

## **8. Appealing a Formal Decision**

If the complaint has not been resolved to the employee's satisfaction they may appeal in writing, to the Clerk of Governors, setting out the grounds of their appeal, within 5 working days of receiving the written confirmation of the original decision. The employee must detail how they consider the

procedure has not been correctly applied, and/or how the outcome was not reasonable or proportionate.

The appeal will normally be heard as soon as possible after receipt of the appeal letter, by an Appeal Committee of one or more governors, convened by the Clerk to Governors. They will hear the reasons for the appeal and consider whether further investigation is required.

The Appeal Committee may have an HR adviser attend the meeting with the employee. The HR adviser, who should not have had any previous involvement in dealing with the complaint, shall not have a vote in the decision of the Appeal Committee.

The Appeal Committee will confirm its final decision in writing, as soon as reasonably possible after the appeal meeting. This is the end of the procedure and there is no further right of appeal.

Through careful, confidential and safe management of the case and workplace situation, all involved should be able to continue to work in their original roles but, in some exceptional cases, this may not be possible. Mediation will be considered at this stage to help facilitate a return to work or to assist in restoring working relations amongst employees. Ultimately, however, the transfer of either party to alternative work may need to be considered.

## **9. Suspensions and Temporary Transfers**

Suspensions and transfers are a neutral act, to protect and prevent any further possible conflict or difficulties particularly where there is a serious allegation that one member of staff has been bullied, harassed or discriminated against by another. All suspension/transfer decisions need to be fully evidenced and audited. A decision to suspend a member of staff can be made and/or ended by either a Trust executive or the Headteacher. The local governing body may be consulted. A decision to suspend a headteacher can only be made and/or ended by a Trust executive in consultation with the Trust board. A decision to suspend a Trust executive can only be made and/or ended by the Trust board. Suspension would, in all cases, be on full pay.

Suspensions/transfers should be closely monitored and as short as possible, to enable, wherever possible, an effective return to work.

## **10. Protection and Support for those Involved**

Employees who make complaints or who participate in good faith in any investigation conducted under this policy must not suffer any form of retaliation or victimisation as a result.

If you believe you have suffered any such treatment you should inform your Headteacher or a member of the BET Executive Team. If the matter is not remedied you should raise it formally using the BET Grievance Procedure.

Anyone found to have retaliated against or victimised someone for making a complaint or assisting in good faith with an investigation under this procedure, will be subject to disciplinary action under our disciplinary procedure.

Date drafted	November 2020 (approved BET resources committee)
Author	K. Sanders/E. Hilling
Version	1
Next review date	November 2023