



## HR: Disciplinary Policy and Procedure

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<b>Last Review</b>	September 2020
<b>Applicable to:</b>	All Trust Schools
<b>Reviewed By:</b>	SP
<b>Approved By:</b>	Board of Trustees September 2020

### Comments:

This policy has been reviewed in line with government requirement to review the document annually. It includes guidance through the disciplinary process as well as identifying some of the reasons the disciplinary policy may be required and information about employees' right to appeal. The policy is in line with government guidance. Draft approved by external solicitors.

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## **1. ABOUT THIS PROCEDURE**

- 1.1 The aims of this Disciplinary Procedure are to provide a framework within which managers can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary. The standards of conduct expected of all employees are set out in the Code of Conduct Policy, Staff Handbook **OR** available from the Human Resources Department.
- 1.2 It is our policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond before taking any formal action.
- 1.3 The procedure applies to all employees regardless of length of service. It does not apply to agency workers or self-employed contractors.
- 1.4 This procedure is used to deal with misconduct. It does not apply to cases involving genuine sickness absence, proposed redundancies or poor performance. In those cases reference should be made to the appropriate policy or procedure.
- 1.5 This procedure has been implemented following consultation with staff and recognised Trade Unions.
- 1.6 This procedure does not form part of any employee's contract of employment and it may be amended at any time. We may also vary this procedure, including any time limits, as appropriate in any case.

## **2. MINOR CONDUCT ISSUES**

- 2.1 Minor conduct issues can often be resolved informally between you and your line manager. These discussions should be held in private and without undue delay whenever there is cause for concern. Where appropriate, a note of any such informal discussions may be placed on your personnel file but will be ignored for the purposes of any future disciplinary hearings. In some cases an informal verbal warning may be given, which will not form part of your disciplinary records. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).
- 2.2 If you have difficulty at any stage of the procedure because of a disability, you should discuss the situation with your line manager **OR** a member of the Human Resources Department as soon as possible.

### **3. CONFIDENTIALITY**

- 3.1 Our aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.
- 3.2 You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.
- 3.3 You will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against you, unless we believe that a witness's identity should remain confidential.

### **4. INVESTIGATIONS**

- 4.1 The purpose of an investigation is for us to establish a fair and balanced view of the facts relating to any disciplinary allegations against you, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from you and any witnesses, and/or reviewing relevant documents. The CEO/Headteacher will usually appoint an Investigating Officer to carry out the investigation.
- 4.2 Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.
- 4.3 You do not normally have the right to bring a companion to an investigative interview. However, we may allow you to bring a companion if it helps you to overcome any disability, or any difficulty in understanding English. Whilst there is no right to be accompanied by a Trade Union Representative at an investigatory meeting, any request to do so will be considered as long as it does not unduly hold up the process.
- 4.4 You must co-operate fully and promptly in any investigation. This will include informing us of the names of any relevant witnesses, disclosing any relevant documents to us and attending investigative interviews if required.

### **5. CRIMINAL ALLEGATIONS**

- 5.1 Where your conduct is the subject of a criminal investigation, charge or conviction we will investigate the facts before deciding whether to take formal disciplinary action.
- 5.2 We will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where you are unable or have been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, we may have to take a decision based on the available evidence.

5.3 A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if we consider that it is relevant to your employment.

## **6. SUSPENSION**

6.1 In some circumstances we may need to suspend you from work. The suspension will be for no longer than is necessary to investigate any allegations of misconduct against you or so long as is otherwise reasonable while any disciplinary procedure against you is outstanding. We will confirm the arrangements to you in writing. While suspended you should not visit our premises or contact any of our pupils, parents, suppliers, contractors or staff, unless you have been authorised to do so by the Headteacher.

6.2 Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. You will continue to receive your full [basic] salary and benefits during the period of suspension.

6.3 You will be given the name of an independent person who will be able to provide personal and confidential support during the period of suspension.

## **7. NOTIFICATION OF A HEARING**

7.1 Following any investigation, if we consider there are grounds for disciplinary action, you will be required to attend a disciplinary hearing. We will inform you in writing of the allegations against you, the basis for those allegations, and what the likely range of consequences will be if we decide after the hearing that the allegations are true. We will also include the following where appropriate

- (a) a summary of relevant information gathered during the investigation;
- (b) a copy of any relevant documents which will be used at the disciplinary hearing; and
- (c) a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality.

7.2 We will give you written notice of the date, time and place of the disciplinary hearing. The hearing will be held as soon as reasonably practicable, but you will be given a reasonable amount of time, usually five to seven days, to prepare your case based on the information we have given you.

## **8. THE RIGHT TO BE ACCOMPANIED**

8.1 You may bring a companion to any disciplinary hearing or appeal hearing under this procedure. The companion may be either a trade union representative or a colleague. You must tell the Investigating Officer who your chosen companion is, in good time before the hearing.

8.2 A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

- 8.3 If your companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards, we may ask you to choose someone else.
- 8.4 We may, at our discretion, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family) if this will help overcome a disability, or if you have difficulty understanding English.

## **9. PROCEDURE AT DISCIPLINARY HEARINGS**

- 9.1 If you or your companion cannot attend the hearing you should inform us immediately and we will arrange an alternative time. You must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If you fail to attend without good reason, or are persistently unable to do so (for example for health reasons), we may have to take a decision based on the available evidence.
- 9.2 The hearing will be chaired by a Governor or Trustee. The Investigating Officer and a member of the Human Resources Department will also be present. You may bring a companion with you to the disciplinary hearing (see *paragraph 8*).
- 9.3 At the disciplinary hearing we will go through the allegations against you and the evidence that has been gathered. You will be able to respond and present any evidence of your own. Your companion may make representations to us and ask questions, but should not answer questions on your behalf. You may confer privately with your companion at any time during the hearing.
- 9.4 You may ask relevant witnesses to appear at the hearing, provided you give us sufficient advance notice to arrange their attendance. You will be given the opportunity to respond to any information given by a witness. However, you will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, we decide that a fair hearing could not be held otherwise.
- 9.5 We may adjourn the disciplinary hearing if we need to carry out any further investigations such as re-interviewing witnesses in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 9.6 We will inform you in writing of our decision and our reasons for it, usually within one week of the disciplinary hearing. Where possible we will also explain this information to you in person.

## **10. DISCIPLINARY PENALTIES**

- 10.1 The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. We aim to treat all employees fairly and consistently, and a penalty imposed on another employee for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.

10.2 You will not normally be dismissed for a first act of misconduct, unless we decide it amounts to gross misconduct or you have not yet completed your probationary period.

10.3 **Stage 1 - First written warning.** A first written warning may be authorised by the Chair of the Disciplinary Panel, or their nominated representative. It will usually be appropriate for a first act of misconduct where there are no other active written warnings on your disciplinary record.

10.4 **Stage 2 - Final written warning.** A final written warning may be authorised by Chair of the Disciplinary Panel, or their nominated representative. It will usually be appropriate for:

- (a) misconduct where there is already an active written warning on your record; or
- (b) misconduct that we consider sufficiently serious to warrant a final written warning even though there are no other active warnings on your record.

10.5 **Stage 3 - Dismissal.** Dismissal may be authorised by Chair of the Disciplinary Panel, or their nominated representative. It will usually only be appropriate for:

- (a) any misconduct during your probationary period;
- (b) further misconduct where there is an active final written warning on your record; or
- (c) any gross misconduct regardless of whether there are active warnings on your record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal). Examples of gross misconduct are appended to this procedure.

10.6 **Alternatives to dismissal.** In some cases we may at our discretion consider alternatives to dismissal. These may be authorised by the CEO/Chair of the Board and will usually be accompanied by a final written warning. Examples include:

- (a) Demotion.
- (b) Transfer to another department or job.
- (c) A period of suspension without pay.
- (d) Loss of seniority.
- (e) Reduction in pay.
- (f) Loss of future pay increment or bonus.
- (g) Loss of overtime.

## **11. THE EFFECT OF A WARNING**

11.1 Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period.

11.2 A first written warning will usually remain active for six months and a final written warning will usually remain active for 12 months. In exceptional cases verging on gross misconduct, a final

written warning may state that it will remain active indefinitely. Your conduct may be reviewed at the end of a warning's active period and if it has not improved sufficiently we may decide to extend the active period.

11.3 After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

## **12. APPEALS**

12.1 If you feel that disciplinary action taken against you is wrong or unjust you should appeal in writing, stating your full grounds of appeal, to the Chair of the Disciplinary Panel within one week of the date on which you were informed of the decision.

12.2 If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if your appeal is successful you will be reinstated with no loss of continuity or pay.

12.3 If you raise any new matters in your appeal, we may need to carry out further investigation. If any new information comes to light we will provide you with a summary including, where appropriate, copies of additional relevant documents and witness statements. You will have a reasonable opportunity to consider this information before the hearing, and you or your companion may comment on any new evidence arising during the appeal before any decision is taken.

12.4 We will give you written notice of the date, time and place of the appeal hearing. This will normally be five to seven days after you receive the written notice.

12.5 The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at our discretion depending on the circumstances of your case. In any event the appeal will be dealt with as impartially as possible.

12.6 Where possible, the appeal hearing will be conducted impartially by a panel of Governors or Trustees who have not been previously involved in the case. The Investigating Officer, a member of the Human Resources Department **AND/OR** the manager who conducted the disciplinary hearing will also usually be present. You may bring a companion with you to the appeal hearing (see paragraph 8).

12.7 We may adjourn the appeal hearing if we need to carry out any further investigations in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

12.8 Following the appeal hearing we may:

- (a) confirm the original decision;
- (b) revoke the original decision; or

(c) substitute a different penalty which will not be greater than the original one.

12.9 We will inform you in writing of our final decision as soon as possible, usually within one week of the appeal hearing. Where possible we will also explain this to you in person. There will be no further right of appeal.

## **Appendix**

### **A. Examples of Misconduct**

The following are examples of matters that will normally be regarded as misconduct and will be dealt with under our Disciplinary Procedure:

1. Minor breaches of our policies including the Sickness Absence Policy, Electronic Information and Communications Systems Policy, and Health and Safety Policy;
2. Minor breaches of your contract;
3. Damage to, or unauthorised use of, our property;
4. Poor timekeeping;
5. Time wasting;
6. Unauthorised absence from work;
7. Refusal to follow instructions;
8. Excessive use of our telephones for personal calls;
9. Excessive personal e-mail or internet usage;
10. Obscene language or other offensive behaviour;
11. Negligence in the performance of your duties; or
12. Smoking in no-smoking areas.

This list is intended as a guide and is not exhaustive.

### **B. Examples of Gross Misconduct**

The following are examples of matters that will normally be regarded as Gross misconduct and will be dealt with under our Disciplinary Procedure:

- 1) Any action on your part which results in a referral to the Independent Safeguarding Authority for consideration of your inclusion on the Children's Barred List.
- 2) Breaching standards of professional conduct.
- 3) Theft, misappropriation, serious misuse or malicious damage to the School's or another employee's property.
- 4) Acceptance of bribes or other secret payments.
- 5) Unauthorised use of the School property.
- 6) Misuse, or the unauthorised use, of the Academy premises.

- 7) Fraud, deceit, or deception including, but not restricted to:
  - falsification of, or aiding and abetting the falsification of, any of the Academy's records, including, subsistence and expenses claims, and timesheets.
  - giving false information as to qualifications or entitlement to work (including immigration status).
- 8) Actual or threatened violent, offensive or other intimidating conduct.
- 9) Harassment of any employee, parent, carer or student of the Academy.
- 10) The covert recording of a meeting;
- 11) Discrimination against any employee, parent, carer or student of the Academy on the grounds of age, gender, sexual orientation, marital or civil partner status, gender reassignment, race, colour, nationality, ethnic or national origin, religion or belief or disability.
- 12) The use of alcohol or drugs while at work. Excepted are drugs to treat a recognised medical condition, which do not diminish the competence, capability or capacity of the employee, and which are prescribed by a medical practitioner who is licensed by the British Medical Association. The quantity of the drugs taken, and the frequency of their use must comply with the advice provided by the licensed medical practitioner for this exception to apply.
- 13) Possession use or supply, or attempted supply of illegal drugs.
- 14) Conduct that constitutes a criminal offence, whether committed on the Academy premises or elsewhere.
- 15) Inappropriate use of the internet, telephone or email, including, but not restricted to access to deliberately accessing pornographic, offensive or obscene material.
- 16) Inappropriate use of Social Networking sites that results, for example, in bringing the Academy, pupils or staff into disrepute.
- 17) Acts or omissions likely to cause injury or otherwise impair the health and safety of you or others whilst on the business, or at the premises of the Academy.
- 18) Serious negligence leading to loss, damage or injury.
- 19) Acts or omissions likely to lead to a breach of confidentiality.
- 20) Involvement in private activities which in the opinion of the Academy place the employee's interests in conflict with those of the Academy.
- 21) Involvement in additional employment which in the opinion of the Academy place the employee's interests in conflict with those of the Academy. Employees should consult the Principal prior to accepting additional employment, if in doubt.
- 22) Involvement in any activities which could weaken public confidence in the Academy.

- 23) Serious insubordination, including the failure to comply with a reasonable instruction given by, or with the authority of a more senior person.
- 24) Misconduct so incompatible with the employee's duties and responsibilities that their continued presence within the organisation is insupportable.
- 25) A serious breach of the Academy's policy or procedures.
- 26) Bringing the Academy into disrepute.
- 27) Knowingly taking parental, paternity or adoption leave when not eligible to do so or for a purpose other than supporting a child.
- 28) Making a disclosure of false or misleading information under Whistleblowing provisions maliciously, for personal gain, or otherwise in bad faith.
- 29) Making untrue allegations in bad faith against a colleague.
- 30) Victimising a colleague who has raised concerns, made a complaint or given evidence information under Whistleblowing provisions, Anti-harassment and Bullying Policy, Grievance Procedure, Disciplinary Procedure or otherwise.

This list is a guide and is not exhaustive.