

Disciplinary Policy

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Policy prepared by (name and designation)	Nick Blackburn CEO
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1. POLICY STATEMENT

- 1.1 The Trust values all its employees and appreciates the essential role they play in delivering high quality education to children and young people.
- 1.2 The Trust also recognises that employees at all levels need to know what is expected of them, how they are expected to behave and what they can expect of the Trust as an employer.
- 1.3 Good conduct and performance by employees are crucial parts of any employment relationship and the Trust aims to promote these areas through a number of proactive employment practices and initiatives.
- 1.4 Unfortunately, there may be cases where employees do not meet the standards of behaviour or performance that the Trust expects at work. In such cases, the Trust will aim to address issues informally wherever possible and appropriate.
- 1.5 However, if the informal process has been tried unsuccessfully, or the circumstances of the case make the informal route inappropriate, the Trust will use a formal process. Both the informal and formal procedures are set out in this policy.

2. EQUALITIES

- 2.1 The Trust is committed to ensuring that all HR policies are compliant with and promote the equalities agenda. The Trust will operate this policy consistently and in a non-discriminatory way by taking account of any relevant individual circumstances that may impact on the situation, including an employee's:
 - Race (including culture and nationality)
 - Religion or belief
 - Gender (including transvestitism, transgender and transsexuality)
 - Sexuality (including homosexuality and bisexuality)
 - Impairment (including physical and / or mental impairments)
 - Age
 - Any other equality issue (e.g. people with dependants and/ or caring responsibilities)
- 2.2 Further guidance on addressing equality issues when implementing this policy and the related procedure is given in the associated guidance and is also available from the Trust's HR provider.

3. INTRODUCTION

- 3.1 Disciplinary procedures should not be viewed solely as a means of imposing sanctions but initially as a corrective measure that contributes to the improvement of individual conduct or performance.

3.2 This policy and the related procedures aim to: help and encourage all employees to achieve and maintain acceptable standards of conduct / behaviour and performance at work

- promote fairness and transparency by providing written rules and procedures that are specific, clear and applied consistently
- help the Trust to deal with disciplinary situations in the workplace as quickly and effectively as possible

3.3 They replace all previous disciplinary policies and procedures adopted by the Trust and reflect the ACAS Code of Practice on Disciplinary and Grievance Procedures.

3.4 This policy must be read in conjunction with the related guidance document.

4. DEFINITION

4.1 Disciplinary situations include misconduct and / or poor performance. Misconduct is any type of behaviour or conduct at work that falls below the standard required by the Trust or is in breach of a Trust policy or rule.

4.2 Examples of matters that the Trust considers to be disciplinary offences include (but are not limited to):

- poor performance due to an employee's own carelessness, negligence or lack of effort (the Trust has a separate 'Capability Policy' to deal with poor performance that is not covered by this definition)
- persistent bad timekeeping
- unauthorised absence
- damage to or misuse of Trust property
- failure to follow the Trust's policies and procedures
- abusive behaviour
- refusal to follow a reasonable or lawful instruction issued by a manager or member of the leadership team
- poor attendance (outside the areas covered in the Trust's 'Sickness Management Policy) and
- smoking in excluded areas, as defined in the Trust's 'No Smoking at Work' Policy

5. GROSS MISCONDUCT

5.1 Gross misconduct is generally seen as misconduct serious enough to overturn the contract of employment between the Trust and the employee, thus justifying summary dismissal (dismissal without notice).

5.2 As such, acts considered as gross misconduct are so serious in themselves or have such serious consequences that they may call for summary dismissal for a first offence. However, the Trust will always follow a fair disciplinary process before dismissing for gross misconduct.

5.3 Examples of acts that the Trust will normally regard as gross misconduct (although not exhaustive) are:

- theft or fraud
- falsification of a qualification that is a stated requirement of employment or results in financial gain to the employee
- deliberate falsification of records, reports, accounts, expense claims or self-certification forms, whether or not for personal gain
- physical violence or bullying
- deliberate and serious damage to property
- serious misuse of the Trust's property or name
- deliberately accessing internet sites containing pornographic, offensive or obscene material
- serious insubordination
- unlawful discrimination or harassment
- bringing the Trust into serious disrepute
- serious incapability at work brought on by alcohol or illegal drugs
- possession, custody or control of illegal drugs on Trust premises
- causing loss, damage or injury through serious negligence
- a serious breach of health and safety rules
- a serious breach of confidence
- conviction of a criminal offence (or failure to declare a conviction) that is relevant to the employee's employment
- failure to declare unsuitability to work with children that is relevant to the employee's work

5.4 If an employee is accused of an act of gross misconduct, they will normally be suspended from work on full pay, whilst the alleged offence is investigated.

5.5 If the Trust is satisfied that gross misconduct has occurred on completion of the disciplinary procedure, the result will normally be summary dismissal without notice.

6. SCOPE

6.1 This policy and the related procedures apply to all Trust employees.

6.2 It should also be noted that day-to-day managerial supervision of and guidance to employees is outside the scope of this policy.

7. GENERAL PRINCIPLES

7.1 The Trust recognises the importance of dealing with disciplinary issues fairly. As such:-

- where appropriate, informal action will be taken to resolve problems before moving to the formal procedure
- if formal action is needed, the action that is reasonable or justified will depend on the circumstances of each case
- no disciplinary action will be taken against an employee until the case has been fully investigated to establish the facts and there is a reasonably held belief that the employee committed the misconduct in question
- where formal action is necessary, the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case at a Disciplinary Hearing before any decision is made
- employees will be provided with written copies of evidence and relevant witness statements as appropriate in advance of a Disciplinary Hearing
- employees have the right to be accompanied at investigatory meetings and Disciplinary Hearings and Appeals by their trade union representative, workplace colleague or friend of their choice who does not have a conflict of interest. The Trust will consider a request for legal representation where professional registration may be at risk or where there is a possibility of a referral to a statutory body (in which case the Trust will also have access to legal representation).
- no employee will be dismissed for a first breach of discipline except in the case of gross misconduct (see sections 4 and 9), when the penalty will be dismissal without notice or pay in lieu of notice
- an employee will have the right to appeal against any formal disciplinary action
- the Trust will raise and deal with issues promptly and not unreasonably delay meetings, decisions or confirmation of those decisions
- that staff dealing with disciplinary matters will be appropriately trained

7.2 The Trust may implement the Disciplinary Policy and the related procedures at any stage if it feels that the employee's alleged misconduct warrants this.

8. RESPONSIBILITY

8.1 ***CEO / Executive Head Teacher / Head Teacher / Head of School and Local Governing Bodies*** are responsible for ensuring that this policy and the related procedures are implemented effectively in the Trust. They are also responsible

for communicating the standard of behaviour required in the Trust and taking an overview on this. They should ensure that managers with staff management responsibilities have had appropriate training on the application of the policy and comply with relevant legislation when considering taking disciplinary action.

- 8.2 *Employees with staff management responsibilities* have primary responsibility for managing effective conduct and job performance in their teams. Proactive use of performance management processes, supplemented by regular meetings to discuss day-to-day performance, should help to establish an ongoing positive working relationship between managers and their team members. Ideally, this should prevent disciplinary issues from occurring in the first instance.

They should ensure that they have received appropriate training on how to implement this policy and make their Executive Head Teacher / Head Teacher / Head of School aware of any difficult cases.

- 8.3 **Employees** must acknowledge that good conduct and performance are crucial parts of any employment relationship and are accepted as the norm. They must also comply with this policy and the related procedures as appropriate.
- 8.4 The Trust's HR provider are responsible for advising managers on effective case management and for gathering, analysing and reporting on data relating to disciplinary cases. Relevant HR staff may accompany managers at disciplinary investigatory meetings, Hearings and Appeal Hearings in an advisory capacity and advise Governors/Directors.

9. AUTHORISED OFFICERS

- 9.1 **Suspensions** from duty can be authorised by the CEO / Executive Head Teacher/Head Teacher. Suspensions can only be lifted by the CEO or the Chair of Local Governing Body.
- 9.2 The table at (**Appendix 1**) sets out the persons to be appointed throughout the stages of the disciplinary procedure depending on the person who is the subject of the disciplinary proceedings.

10. DISMISSALS FOR 'SOME OTHER SUBSTANTIAL REASON' (SOSR)

- 10.1 There may be exceptional circumstances where the grounds for dismissal do not solely relate to misconduct but may either be wholly due to or involve 'SOSR' (i.e. the breakdown of the working relationship). Further advice is available from the Trust's HR provider.

11. THE DISCIPLINARY PROCEDURE

Informal Process – Management Guidance

- 11.1 The Trust will always seek to resolve cases of minor misconduct informally where possible and appropriate. If such issues can be settled at an early stage, they are normally less time-consuming and less likely to damage working relationships. However, managers should seek agreement from the CEO / Executive Head Teacher / Head Teacher / Head of School and advice from the Trust's HR provider.
- 11.2 This involves managers talking to the employee in a two-way conversation, aimed at discussing possible shortcomings in conduct and encouraging improvement. Although the employee does not have a legal right to representation at this stage of the process, both this and HR involvement may be agreed in certain cases.
- 11.3 The manager will ensure that the employee understands what needs to be done, how their conduct will be reviewed and the timescale for review and confirm this in writing to the employee. Further details are given in the guidance to this policy.
- 11.4 However, if the informal process has been tried unsuccessfully, or the circumstances of the case make the informal route inappropriate, the Trust will seek to address the matter under the formal process.
- 11.5 If an employee refuses to accept management guidance, or the informal route has been tried unsuccessfully, it may be necessary to invoke the formal process under this procedure.

Formal Process

Investigation

- 11.6 This will usually involve an investigation into the alleged misconduct by an appropriate officer to establish the full facts of the case. The investigation will take place without unreasonable delay. The Investigating Officer will keep the employee informed of progress.
- 11.7 Employees involved in disciplinary investigation meetings may be accompanied by a trade union representative, colleague or friend of their choice who does not have an interest in the case.
- 11.8 An investigation may not in itself result in any disciplinary action. When this is the case, full feedback will be given to relevant parties.

Suspension

- 11.9 With the exception of gross misconduct cases, suspensions will generally be considered as a last resort if temporary alternative work is not suitable or available.
- 11.10 Suspensions may be made prior to the start of the investigation or later during the course of the investigation (if this becomes necessary).
- 11.11 Where a period of suspension with pay is considered necessary, this will be as brief as possible. Suspension is not an assumption of guilt and is not considered a disciplinary sanction (i.e. a suspension is made 'without prejudice').
- 11.12 The period of suspension will be kept under review and the Investigating Officer will write to the employee to explain the reason(s) for any delay(s).
- 11.13 An employee who has been suspended must not attend their workplace or enter into their place of work, or discuss the issue with work colleagues or Governors (unless they have been given explicit permission by the investigating officer to do so).

Disciplinary Hearing

- 11.14 If the Trust decides that there is a disciplinary case to answer following investigation, the employee will be notified of this in writing.
- 11.15 The Hearing will be held without unreasonable delay, whilst allowing the employee reasonable time to prepare their case. The Trust will give at least 7 calendar days' / 5 working days' prior notice.
- 11.16 The letter will:
- give details of the time and venue for the Disciplinary Hearing and who will be attending
 - contain information about the alleged misconduct / poor performance and its possible consequences to allow the employee to prepare to answer the case at a Disciplinary Hearing.
 - attach a copy of any written evidence, including witness statements if appropriate
 - advise the employee of their right to be accompanied at the Disciplinary Hearing and the procedure that will be followed

- 11.17 The Disciplinary Hearing will be conducted by the Hearing Panel/Officer, whose role will be to listen to both sides of the case, decide whether disciplinary action is warranted and if so, the level of sanction that is appropriate. The Hearing Panel/Officer will usually be advised by an HR representative.
- 11.18 Where possible, the employee's representative should be consulted about the date and time of the Disciplinary Hearing. If the representative cannot attend on the proposed date, an alternative time and date will be arranged ideally not more than five working days after the original date.
- 11.19 Employees and their representatives should make every effort to attend the Hearing on the date given. Where an employee is unable or unwilling to attend a re-arranged Disciplinary Hearing without good cause, the Hearing will take place in the employee's absence and a decision made on the evidence available. The employee's representative may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation. The employee will then be advised of the outcome in writing.
- 11.20 At the Hearing, the Investigating Officer will explain the complaint against the employee and go through the evidence that has been gathered, may call witnesses and ask questions of the employee and the employee's witnesses.
- 11.21 The employee will be allowed to set out his / her case and answer the allegations made against them. The employee will also be able to ask the Investigating Officer questions, present his/her own evidence, call relevant witnesses and raise any points about information provided by any witnesses called by the Investigating Officer. The Investigating Officer and / or the employee will give advance notice if they intend to call witnesses.
- 11.22 The employee has the legal right be accompanied by their trade union representative, workplace colleague or friend of their choice who does not have a conflict of interest.
- 11.23 The representative will be allowed to address the Hearing to put forward and sum up the employee's case, respond on behalf of the employee to any views expressed at the Hearing and confer with the employee during the Hearing. However, the representative does not have the right to answer questions on the employee's behalf, address the Hearing if the employee does not wish it, or prevent the Investigating Officer from explaining the case against the employee.

Disciplinary Penalties

- 11.24 At the end of the Disciplinary Hearing, the Hearing Panel/Officer will decide whether or not disciplinary or any other action is justified and informs the

employee accordingly in writing, normally within 5 working days of the Hearing.

- 11.25 If an employee's first misconduct or unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning, or even dismissal in cases of gross misconduct.
- 11.26 The Hearing Panel/Officer may also issue separate warnings for unrelated breaches of discipline on separate occasions - i.e. a first written warning for one breach and another first written warning or a final written warning for a different breach.

No Case to Answer

- 11.27 If the Hearing Panel/Officer feels that disciplinary action is not justified, they will advise that there is no case to answer and that no disciplinary information will be kept on the employee's file (unless there is a legal requirement to do so).

First Written Warning

- 11.28 Where misconduct is confirmed (i.e. the employee's conduct does not meet acceptable standards), it is usual to give the employee a first written warning. This will set out:
- the nature of the misconduct
 - the disciplinary penalty
 - the change in behaviour required (with timescale(s))
 - any other action recommended
 - any potential impact on incremental progression if appropriate to the facts of the case
 - that the warning will remain current for 12 months from the date of the Hearing
 - that a further act of misconduct within a set period would normally result in a final written warning
 - the right of appeal, including timescales and how an appeal should be made
 - that a copy of the written warning will be retained on the personal file but disregarded for disciplinary purposes after 12 months from the date of the Hearing, subject to achieving and sustaining satisfactory conduct
 - details of any proposed referral to an appropriate body, if applicable

Final Written Warning

- 11.29 If an employee's first misconduct is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the Trust.

11.30 A final written warning may also be given if there is further misconduct during the currency of a first written warning.

11.31 The letter will set out:

- the nature of the misconduct
- the disciplinary penalty
- the change in behaviour required (with timescale(s))
- any other action recommended
- any potential impact on incremental progression if appropriate to the facts of the case
- that the warning will remain current for 24 months from the date of the Hearing
- the consequences of further misconduct within the set period - i.e. that it may result in dismissal or some other contractual penalty such as demotion or loss of seniority (without salary protection)

- the right of appeal, including timescales and how an appeal should be made

- that a copy of the final written warning will be retained on the personal file but disregarded for disciplinary purposes after 24 months from the date of the Hearing(or longer in exceptional circumstances), subject to achieving and sustaining satisfactory conduct
- details of any proposed referral to an appropriate body, if applicable

Dismissal / Sanction Short of Dismissal

11.32 If the outcome of the Hearing is that there has been an act of gross misconduct (see section 4) or if there is further misconduct during the currency of a written or final written warning, the sanction may be dismissal, or some other action short of dismissal such as demotion, loss of seniority, loss of increment (all without salary protection) disciplinary suspension without pay or transfer.

11.33 If some sanction short of dismissal is imposed, the employee will receive in writing:

- details of the misconduct
- a new contract (where appropriate)

- any potential impact on incremental progression if appropriate to the facts of the case

- that dismissal could result if there is no satisfactory improvement

- the right of appeal, including timescales and how an appeal should be made

- that a copy of the written sanction will be retained on the personal file but disregarded for disciplinary purposes after 24 months from the date of the Hearing, subject to achieving and sustaining satisfactory conduct (although in demotion cases, return to the former grade would not be automatic after this period of time)
- details of any proposed referral to an appropriate body, if applicable

Appeals

- 11.34 If an employee feels that disciplinary action taken against them is inappropriate, they may appeal against the decision.
- 11.35 Employees must do so in writing within 5 working days of receipt of the letter giving the decision on the disciplinary sanction, making clear the grounds for their appeal.
- 11.36 The employee will be given preferably at least 7 calendar days' / 5 working days' notice of the date of the Hearing in writing and has the right to be accompanied.
- 11.37 Disciplinary Appeals will be heard by the Appeal Panel without unreasonable delay and ideally at an agreed time and place.
- 11.38 The employee (or their representative if the employee so wishes) will have the opportunity to comment on any new evidence arising during the appeal before any decision is taken.
- 11.39 Employees have a legal right to be accompanied at Appeal Hearings by their trade union representative, workplace colleague or friend of their choice who does not have a conflict of interest. The employee will normally be informed in writing of the results of the Appeal Hearing within 5 working days of the meeting.

12. SPECIAL CASES

Action against a Trade Union Representative

- 12.1 Where disciplinary action is being considered against an employee who is also a trade union representative, the normal disciplinary procedure will be followed.
- 12.2 However, depending on the circumstances, the Trust will discuss the matter with an official employed by the union at an early stage, after obtaining the employee's agreement. Please contact the Trust's HR provider for further advice.

Child Protection

- 12.3 Where a potential disciplinary matter arises that involves a possible child protection issue due to the nature of the employee's role, this will need to be investigated first under Child Protection procedures. Relevant cases will also be referred to the Local Authority Designated Officer (LADO). Further advice is available from the Trust's HR provider.

Employment Terminated whilst Process Ongoing

- 12.5 The Trust reserves the right to conclude the disciplinary process after the employment has terminated. In such cases, employees will be informed of the outcome of the process in writing and given copies of relevant paperwork.

Suspected Theft, Fraud or Corruption

- 12.6 The Trust will have a duty to report certain incidents of fraud to the EFA. Further information is available in the Trust's Financial handbook or from the Trust's HR provider.

Employees Charged with or Convicted of Criminal Offences

- 12.7 If an employee is charged with, or convicted of a criminal offence, this is not normally in itself reason for disciplinary action. However, the Trust will consider what effect the charge or conviction has on the employee's suitability to do the job and their relationship with the Trust, work colleagues and customers. Further information is available in the guidance to this policy.

Overlapping Grievance Case

- 12.8 In managing disciplinary issues, the Trust will not allow grievances put forward by the employee concerned to delay the process unnecessarily.
- 12.9 If an employee raises a grievance during the disciplinary process, the Trust may decide to temporarily suspend the disciplinary process in order to deal with the grievance. However, where the grievance and disciplinary cases are related, the Trust may decide that it is appropriate to deal with both issues concurrently.
- 12.10 Further information is available in the guidance to this policy.

13. ILLNESS / ABSENCE DURING THE DISCIPLINARY PROCEDURE

- 13.1 Where an employee is absent from work due to illness, the Trust will seek advice from the Trust's Occupational Health Provider on the employee's ability to go through the process before progressing the case further.

- 13.2 If the employee's absence from work occurs during the course of the disciplinary procedure, the Trust will also seek advice from Occupational Health on the employee's fitness to attend meetings, Hearings, Appeals etc.
- 13.3 If the employee is absent from work due to illness, the Trust will progress the case as far as possible (i.e. interviewing witnesses and collecting relevant information.)
- 13.4 The Trust's Sickness Management Policy and procedures will continue to be implemented as normal throughout any disciplinary process. The Trust will seek to keep the employee at work wherever possible through temporary redeployment etc.

14. INCREMENTAL PROGRESSION

- 14.1 Where incremental progression applies, it may be withheld for the duration of any sanction given if this is appropriate to the facts of the case and the employee will be advised of this in writing.

15. TRADE UNIONS

- 15.1 The Trust's recognised trade unions have been consulted in the development of this policy. They will accompany, support and represent their members at disciplinary interviews, Hearings and Appeal Hearings relating to this and any associated policy and procedures. Further information is available in the guidance to this policy.

16. TRAINING

- 16.1 It is important that all employees, including all levels of management are aware of the rules and procedures for dealing with disciplinary issues. The Trust should ensure managers are appropriately trained in the use of the procedures.

17. WRITTEN RECORDS

- 17.1 Details of all disciplinary cases and subsequent action taken will be retained on the employee's personal file in accordance with the Data Protection Act 1998 and other legislative provisions.

18. CONFIDENTIALITY

- 18.1 All employees involved in or with knowledge of misconduct issues must conduct themselves appropriately and treat all information confidentially and in accordance with their role in the process. Information will only be shared with relevant parties.

19. REFERENCES

- 19.1 The Trust will disclose information regarding current disciplinary sanctions when requested to do so for the purpose of employment references (including information on expired sanctions and allegations in cases relating to suitability to work with children).

20. MONITORING AND REVIEW

- 20.1 The Trust will keep this policy and the related procedure under review to make sure they are relevant and effective.
- 20.2 The Trust's recognised trade unions will be consulted before new or additional rules are introduced.

21. ADVICE

- 21.1 For further advice on this policy and the related procedures, or if managers have any concerns about practical implementation, please see the related guidance to this policy.

Review Date: Autumn 2018

INVESTIGATING, DISCIPLINARY AND APPEAL MANAGERS

Appendix 1

The table below sets out the persons to be appointed throughout the stages of the disciplinary procedure depending on the person who is the subject of the disciplinary proceedings:

Employee Level	Sanction Level	Investigating Manager	Disciplinary Manager	Appeal Manager
CEO	Up to and including dismissal	Chair of Directors or a non-staff Director nominated by the Chair of Directors or external independent advisor	Directors' Disciplinary Panel appointed by the Vice Chair of Directors	Directors' Appeal Panel appointed by the Vice Chair of Directors
Deputy CEO Head Teacher and Director of Operations	Up to and including dismissal	CEO or Chair of Directors or a non-staff Director nominated by the Chair of Directors	Directors' Disciplinary Panel appointed by the Vice-Chair of Directors	Directors' Appeal Panel appointed by the Vice-Chair of Directors
	Up to final written warning	CEO or Chair of Directors	CEO	Directors' Appeal Panel
Head of School	Up to and including dismissal	Deputy CEO or CEO	Directors' Disciplinary Panel	Directors' Appeal Panel
	Up to final written warning	Deputy CEO or CEO	Deputy CEO or CEO	Directors' Appeal Panel
Other Leadership Spine	Up to and including dismissal	Head Teacher or Head of School (appointed by the Deputy CEO or CEO)	Directors' Disciplinary Panel	Directors' Appeal Panel
	Up to final written warning	Member of Leadership Team (appointed by Head Teacher or Head of School)	Deputy CEO or CEO	Director's Appeal Panel

Employee Level	Sanction Level	Investigating Manager	Disciplinary Manager	Appeal Manager
Other Teaching and Support Staff	Up to and including dismissal	Head Teacher/Head of School or Member of Leadership Team (appointed by Head Teacher/Head of School)	CEO or Deputy CEO or Local Governing Body	Local Governing Body Appeal Panel
	Up to final written warning	Member of Leadership Team (appointed by Executive Head Teacher/Head Teacher or Head of School)	Deputy CEO or Deputy CEO or Local Governing Body	Local Governing Body Appeal Panel