Disciplinary Policy

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Changes/updates since previous version:

- No material changes to policy provisions
- Minor amendments to grammar, spelling, layout and removal of some duplicating sentences.
- Additional clarification to paragraph 2.2

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1. Introduction

The aims of this Disciplinary Policy are to:

- set out the standards of conduct expected of all staff
- ensure consistent and fair treatment for all
- ensure that any disciplinary matter is dealt with fairly and without unreasonable delay.

This policy and procedure apply to all employees except those within their probationary period, who are subject to the probationary policy. It does not apply to agency workers, consultants, self-employed contractors, or volunteers unless the allegation relates to safeguarding.

This policy and procedure does not form part of any employee's contract of employment and it may be amended at any time.

Where appropriate, actions taken by employees outside working hours may also fall within the scope of this policy.

2. Disciplinary principles

Any disciplinary matter will be dealt with fairly and without unreasonable delay.

You will be given the opportunity to respond to any allegations before any formal sanction is imposed, and you will have a right of appeal.

All employees must treat information communicated in connection with a disciplinary matter as confidential. A breach of confidentiality will be taken seriously and may lead to disciplinary action under this policy and procedure.

It is accepted that distinguishing between misconduct and gross misconduct can be complex. Each case will therefore be treated on its own merits. Since the examples are guidelines, discretion will have to be exercised by us in categorising breaches of discipline, having regard to all the circumstances under which the breach of discipline occurred.

2.1. Misconduct

Misconduct is any behaviour or conduct that falls below the standard required or is in breach of any policy or rule.

Examples of misconduct include (but are not limited to):

- minor breaches of policies
- poor timekeeping
- work not of the required standard (where capability is not in question)
- unacceptable behaviour that undermines a productive environment or is inconsistent with workplace standards
- time wasting
- refusal to follow instructions
- inappropriate or offensive behaviour, for example foul or abusive language

- disruptive behaviour
- minor damage to, or unauthorised use of property/facilities
- negligence in the performance of duties
- breach of the absence reporting procedures
- inappropriate use of social media.

2.2. **Gross misconduct**

Gross misconduct is serious misconduct that irreparably undermines the implied duty of mutual trust and confidence or prejudices our reputation or business. Gross misconduct is sufficiently serious to justify dismissal without notice or payment in lieu of notice.

Examples of gross misconduct include (but are not limited to):

- serious failure to follow child protection procedures
- failure to maintain appropriate professional boundaries with any pupil, including ex-pupils
- behaviour that has harmed or may have harmed a child
- behaviour that indicates an employee may not be suitable to work with children including such behaviour outside of the workplace which may or may not involve children
- gross negligence
- wilful/deliberate breach of professional standards relevant to your employment and/or role
- wilful or persistent refusal to carry out a management instruction or any act of serious insubordination
- theft or fraud
- falsification of any records
- violent or threatening behaviour
- dishonesty
- breach of confidentiality or failure to keep confidential information secure
- serious damage to or misuse of property/premises
- criminal offences or conduct, including those committed outside the workplace, which impact on the employee's ability or suitability to work in a school
- smoking (including the use of e-cigarettes) on school premises
- being under the influence of alcohol or drugs at work or at a work-related event
- inappropriate use of Information Technology including email or internet abuse or accessing sites containing pornographic, offensive, or obscene material using work provided technology.
- covertly recording hearings, meetings, or colleagues

3. Safeguarding and child protection allegations

A safeguarding allegation is an allegation that an employee has:

- behaved in a way that has, or may have, harmed a child
- possibly committed a criminal offence against or related to a child
- behaved towards a child in a way that indicates that they are unsuitable to work with children
- behaved, or may have behaved, in a way that indicates they may not be suitable to work with children.

The 'harm test' may be met if you or an agency worker has undertaken any of the behaviours referred to above.

This includes where you, an agency worker or volunteer is involved in an incident outside of work which did not involve children but could have an impact on your/their suitability to work with children.

In some circumstances, we will have to consider an allegation against an individual not directly employed by us, where its disciplinary procedures do not fully apply, for example, supply teachers provided by an employment agency.

Whilst we are not the employer of agency workers, we must ensure allegations are dealt with properly. In no circumstances should a setting within the organisation decide to cease to use an agency worker due to safeguarding concerns, without finding out the facts and liaising with the Local Authority Designated Officer (LADO) to determine a suitable outcome. We will discuss with the agency whether it is appropriate to suspend the worker, or redeploy them to another part of the organisation, whilst an investigation is carried out.

We will give reasonable consideration, before taking any action, to making a referral to the LADO and whether there is an obligation, statutory or otherwise, to make an appropriate disclosure to any relevant bodies.

3.1. Points to consider during a safeguarding investigation

Where the harm test has been or is likely to be met, allegations concerning the safety and welfare of children must be investigated and the process completed in full. The employee can choose to resign during this process; however, the disciplinary process must continue and be heard post-employment. If the decision is that the member of staff would have been dismissed or a sanction imposed had they still been in employment, there is a legal duty to make the relevant referrals (i.e., DBS and/or Teaching Regulation Agency).

No internal disciplinary investigation/procedures should be initiated in relation to child protection whilst the matter is being investigated by the police/Child Protection/Social Services, without authorisation being given to do so.

3.2. Safeguarding low-level concerns/allegations

In accordance with Keeping Children Safe in Education, we will look to manage any allegations/low-level concerns that do not meet the harm test threshold.

The term 'low-level' concern does not mean that it is insignificant; it means that the behaviour towards a child does not meet the harm test threshold.

A low-level concern is any concern that an adult working in or on behalf of us may have acted in a way that:

- is inconsistent with the staff code of conduct, including inappropriate conduct outside of work; and
- does not meet the allegations threshold or is otherwise not considered serious enough to consider a referral to the LADO.

Examples of such behaviour could include, [but is not limited to]:

- being over friendly with children
- having favourites
- taking photographs of children on their mobile phone
- engaging with a child on a one-to-one basis in a secluded area or behind a closed door or,
- using inappropriate sexualised, intimidating, or offensive language.

4. Informal process and management advice

It may be appropriate for minor conduct issues to be dealt with informally through a management discussion.

Where improvement is required, informal management advice setting out expectations for improvement may be issued in writing.

A copy will be given to you and placed on your personnel file. This informal management advice does not constitute a formal warning but may be referred to in any further disciplinary proceedings within reasonable timescales.

Formal steps will be taken under this policy if the matter is not resolved informally, or an informal approach is not appropriate.

5. Pre-agreement

Both parties can reach an agreement prior to the hearing in circumstances where the facts are not in dispute, and both parties agree on the sanction.

A formal meeting should be held to discuss the key findings of the investigation and issue the pre-agreed sanction.

You will be given the right to appeal against any pre-agreed sanction.

This approach will not apply where the allegation concerns the safeguarding and protection of children, and/or where the harm threshold has or may have been met or where allegations relate to criminal activity or fraud.

It is not appropriate to dismiss an employee by means of pre-agreement.

There will be a right to revert to the procedure outlined within this disciplinary policy at any point prior to the formal pre-agreement meeting taking place.

6. Definition and separation of roles

Where possible we will seek to establish clear separation of roles in any disciplinary process.

These will usually be defined as a Commissioning Manager, Investigating Officer, and a hearing panel member(s).

6.1. The Commissioning Manager

The Commissioning Manager, (normally the Line Manager, Headteacher or the Chair of Governors) will appoint an appropriate person as the Investigating Officer to carry out any formal investigation. They will also review the investigation details before proceeding to a hearing.

6.2. The Investigating Officer

The Investigating Officer will normally be an appropriate member of our staff or an appropriate external third party.

7. The Formal Process

7.1. Suspension

There may be instances where suspension with pay is necessary whilst investigations are carried out.

Where possible, a meeting will be held with you at which the allegations and reasons for considering suspension will be discussed. We will consider reasonable requests from you to be accompanied by a trade union official or work colleague where this does not unreasonably delay the process.

We will consider reasonable alternatives to suspension where they exist. If suspension is deemed necessary, then this does not imply that a decision about the veracity of the allegations has been made and the period of suspension will not be considered as disciplinary action.

Where the allegation concerns the safeguarding of children, a risk assessment should be discussed with the appropriate safeguarding lead. Once this assessment has been made, a decision about suspension can be taken.

Suspension will be reviewed periodically to consider whether circumstances surrounding the suspension have changed.

During suspension a named contact will be assigned to keep in touch with you.

If you are remanded in custody, we will consider whether it is appropriate for the period of suspension to be unpaid.

7.2. Investigation

No disciplinary action or sanction will be applied until the allegations have been investigated.

Unless otherwise impracticable, different individuals will carry out the investigation and disciplinary hearing.

An investigation may consist of the gathering of evidence or an investigation interview with you or witnesses as the case requires.

Investigation interviews are solely for the purpose of information gathering and you will be informed at the outset that the meeting is an investigation interview.

There is no statutory right for you to be accompanied at a formal investigatory meeting; however, we may choose to extend this right to those who do wish to be accompanied.

You may make a request to be accompanied where you would be otherwise unable to reasonably participate. The companion or representative is limited to those persons outlined in section 8.5. and we will consider any reasonable requests made for an alternate companion.

You will be informed as soon as possible as to the conclusion of the investigation and its outcome.

If the allegation is without foundation, no further formal action will be taken, and you will be informed of this in writing.

7.3. Witnesses

The investigator will decide if any witnesses will be interviewed as part of the investigation in relation to the allegation(s).

If there are many witnesses the investigating officer can decide to only talk to a selection of them; however, it may be appropriate to talk to all witnesses.

Character witness statements will not usually be accepted.

The investigating officer may decide that a witness statement can be provided instead of an interview. These would only be if:

- the witness is not an employee, for example a parent or from a third-party business
- only needs to confirm very simple information
- is too unwell to attend a meeting.

If the witness is a child or pupil under the age of 18, the parent/guardian must give consent to us for the child to be spoken to.

The child can only be spoken to once as part of this investigation.

All witnesses will be spoken to as soon as is reasonably possible.

7.4. Invite to formal hearing

If it is decided that there is a disciplinary case to answer, we will invite you to a formal disciplinary hearing.

You will receive at least 5 working days' notice of the hearing in writing.

Notification will include details of the allegations, possible consequences, and sufficient information to enable the employee to answer the case at the formal hearing. This will include any evidence the employer proposes to use in the formal hearing.

7.5. Right to be accompanied

You have the right to be accompanied and supported at a formal hearing by a trade union representative or work colleague (companion).

You should provide the name of your representative within 2 working days of the hearing. Where the chosen companion is unavailable on the day scheduled for the hearing, you may request that the hearing be rescheduled to an alternative time that is reasonable and within

5 working days of the scheduled date.

If the representative remains unavailable, you may be asked to choose another representative.

During the hearing the companion/representative may address the hearing to put your case and confer with you however they may not answer questions on your behalf or address the hearing if you indicate you do not wish this.

7.6. **Disciplinary panel**

The individual responsible for the disciplinary investigation will not be a member of the panel.

Where dismissal is not a possibility a panel may reasonably be conducted by the Commissioning Manager or other appropriate person with authority to give a disciplinary sanction.

Where dismissal is a possible outcome, the case will normally be heard by a panel of three governors. It may be necessary to co-opt governors from other organisations where it is not possible to form a panel from our own governing body.

7.7. **Formal hearing**

At any hearing where dismissal is to be considered, the Local Authority must be invited to send an advisor. This is normally a member of the authority's HR service or an HR provider who is recognised by the authority.

A Human Resources advisor may attend the disciplinary panel to provide professional support and advice to the panel. This advisor will not be a decision maker in this process.

A note taker may be present at the hearing. They will make a record of the hearing, but not of the confidential deliberations of the panel. You will receive a copy of these notes with the formal outcome letter unless otherwise impracticable.

You (and your companion) must make every effort to attend the hearing. If you fail to attend the hearing without good reason, or are persistently unavailable, we may make a decision based on the evidence available.

We do not allow the audio recording of disciplinary hearings unless there are pre-agreed exceptional circumstances. Covert recording or allowing a person to attend covertly may be treated as gross misconduct, depending on the circumstances.

At the hearing you will be entitled to:

- a full explanation of the case against yourself
- set out your case and respond to any allegation
- ask questions, present evidence and call relevant witnesses
- raise points about any information provided by witnesses.

Any witness to be called at a hearing must have submitted a written statement of their knowledge of the case at least 3 working days in advance of the hearing. These statements will be shared with all relevant parties without delay.

The Disciplinary Panel may adjourn the hearing if it is necessary to do so. You will be informed

of the likely period of any adjournment.

7.8. Hearing outcome

The decision is normally conveyed orally at the disciplinary hearing in the presence of the parties and will be confirmed in writing as soon as reasonably practicable, usually within 7 calendar days.

On occasions, particularly after a lengthy hearing, it may be necessary for the disciplinary panel to adjourn and reconvene at another time to consider its decision or close the meeting to consider the evidence and decide. In such cases, it may be agreed to communicate the outcome by telephone or remotely before confirming the decision in writing.

You will be notified of your right to appeal under this policy.

8. Disciplinary action

Where, following a disciplinary hearing, the panel reasonably believes that you have committed a disciplinary offence, the following disciplinary action may be taken:

8.1. Informal management advice

Where the panel establishes that a formal disciplinary sanction is not required, but where minor concerns remain regarding your conduct, they may consider informal management advice, which does not constitute a formal warning, but enables the panel to clarify expectations for future conduct in line with the provisions set out in section 5.

8.2. First written warning

Where misconduct has occurred and informal discussions have not led to sufficient improvement or are not considered appropriate, a formal written warning may be issued.

A written warning will remain active for a period of 12 months, unless you are notified to the contrary, and will be recorded on your personnel file.

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

You will need to be at work throughout the relevant warning period. If you should be absent from work for any reason, we reserve the right to extend the period of warning where reasonable and proportionate in the circumstances.

8.3. Final written warning

If your misconduct is sufficiently serious, or if there are existing live warnings, it may be appropriate to move directly to a final written warning.

A final written warning will normally remain active for a period of 12 months or in exceptional circumstances up to 24 months.

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

You will need to be at work throughout the relevant warning period. If you should be absent from work for any reason, we reserve the right to extend the period of warning at our discretion.

8.4. **Dismissal (including summary dismissal for gross misconduct)**

Where you have committed further acts of misconduct during the life of a final written warning, we may elect to dismiss with notice or payment in lieu of notice.

Where you have committed an act of gross misconduct, you may be summarily dismissed without notice, regardless of whether there are live previous warnings on file.

Where the allegations relate to safeguarding or child protection issues, we will consider whether it is appropriate to make a referral to the DBS.

If a teacher is summarily dismissed, we will make a referral to the Teaching Regulation Agency.

9. **Right to appeal**

You have the right to appeal against any disciplinary sanction given at any stage of the formal process.

If you wish to appeal a sanction you should do so in writing within 5 working days of the receipt of a decision letter to the person named in the letter. Your letter to lodge the appeal should include the grounds for appeal. Examples of reasons to appeal include, breach of procedure, disciplinary penalty too severe; new evidence has come to light or all of the above reasons.

If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. Therefore, during the appeal stage you will remain dismissed, and the dismissal will remain in effect pending the outcome of the appeal.

Where an appeal against dismissal is not upheld, the date of termination will remain at the date on which you were originally dismissed.

If the appeal is successful, you will be reinstated with no loss of continuity of service or pay or any other detriment.

10. **The appeal process**

The appeal hearing will take place as soon as is reasonably practicable and without unreasonable delay.

Wherever possible the appeal will be heard by an appropriate individual, or panel of individuals, who have not been involved in the decision to impose a disciplinary sanction.

At our discretion, the appeal may be either:

- a complete re-hearing of the matter or
- a review of the fairness of the original decision in the light of the procedure that was followed.

New evidence will only be considered if relevant, and there is a good reason why this had not been included as part of the original hearing.

At an appeal, any disciplinary penalty may be reconsidered, but it cannot be increased.

The appeal panel should consist of at least the same number of governors as at the previous hearing.

The decision of the appeal panel will be final and must be reported to the Chair of Governors. It will be confirmed in writing as soon as reasonably practicable, usually within 5 working days.

11. Disciplinary action involving a trade union representative or relating to trade union activities

If you are an accredited trade union representative recognised by us for collective bargaining purposes, no action will be taken under this policy, save for suspending you in a case of suspected gross misconduct, until the matter has been discussed (with your consent) with a full time official of the relevant union.

If consent is withheld, we may continue to apply our policy.

12. Overlapping disciplinary and grievance issues

If you raise a grievance after disciplinary proceedings have started against you, we will consider suspending the disciplinary proceedings for a short period to consider the implications of the grievance (if any) on the disciplinary process. If the grievance and disciplinary issues are unrelated, they can be heard separately but if connected, they may be dealt with concurrently.

13. Financial irregularity:

If a case in a school maintained by the Local Authority involves alleged financial irregularity, corruption or fraud, the Local Authority Internal Audit Department must be contacted at the earliest possible opportunity and, unless otherwise impracticable, before any investigation commences. Internal Audit will determine whether the matter should be referred to the police.

The Education and Skills Funding Agency (ESFA) must be notified of any fraud, theft or irregularity which singly or cumulatively exceeds £5,000. Any unusual or systemic fraud must be reported regardless of value. The ESFA may decide to conduct their own investigation which may take precedence over the schools, and this should be checked at an early stage.

No internal disciplinary investigation/procedures should be initiated in relation to fraud whilst the matter is being investigated by the police/Internal Audit/ESFA without authorisation being given to do so.