

Disciplinary Policy



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General Introduction

This policy document contains the Disciplinary Procedures for schools within the Unity Schools Partnership (“the Trust”).

1 APPLICATION OF THE PROCEDURES

- 1.1 This procedure applies to all employees within the Trust.
- 1.2 An employee working within the Trust, but employed by a third party should have any disciplinary matter managed under the policy/procedure adopted by their employer.

2 PURPOSE

- 2.1 The overall purpose of these procedures is to promote fairness and order in the relationship between schools’ leadership teams and the employees who come under their control. It aims to ensure that any disciplinary matter is dealt with promptly, fairly and that, if appropriate, steps are taken to establish the facts and to give the employee an opportunity to respond before any formal action. This includes ensuring that individuals involved in the disciplinary process are treated reasonably and equitably, with dignity and respect regardless of age, disability, gender, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief and sexual orientation.

Every member of staff is expected to maintain high standards of professional conduct at all times. This includes times when they are not at work and in a situation where their conduct may potentially bring the school, the Trust or their profession into disrepute.

These procedures take account of the ACAS Code of Practice on Disciplinary and Grievance Procedures. They also take account of the conditions of service of the groups of employees to whom they apply and, where adopted, replace any model procedures to be found in the various conditions of service. The principles of **natural justice** will be applied at all stages in this procedure i.e.

- No accused, or a person directly affected by a decision, shall be condemned unless given full chance to prepare and submit their case and rebuttal to the opposing party's arguments;
- No decision is valid if it was influenced by any financial consideration or other interest or bias of the decision maker.

3 INTERPRETATION

- 3.1 In these procedures the term “Governing Body” means the local governing body of the school concerned and any committee of the Local Governing Body acting with delegated authority, or anybody acting in a similar way to a governing body.

Any provisions of these procedures should be interpreted in the light of the applicable legislation which confers the relevant decision-making powers upon academy trusts and their delegation to local school governing bodies and determines the manner in which schools should be governed.

4 CONFIDENTIALITY

- 4.1 All proceedings and documentation will remain confidential to the parties concerned and will not be disclosed to others, with the exception of official bodies which have a right to require disclosure of information or where the school has a responsibility to report or refer a case (see paragraphs 5 and 6 below).
- 4.2 In particular, all parties should be mindful of the need to preserve confidentiality on matters relating to children and young people. Wherever practicable, pupil statements and other statements referring to pupils will have their details protected by redaction, to avoid pupils being identified and/or sensitive information being shared. Save in exceptional circumstances, pupils will not be asked to give evidence at disciplinary hearings.
- 4.3 The delegated committee of the Local Governing Body and the Head of HR will be notified of the outcome of any formal process, once it has concluded.

5 SAFEGUARDING AND YOUNG PEOPLE

- 5.1 The school has separate guidance on managing allegations of abuse relating to children or young people made against school staff and will refer to it in all cases in which it is alleged that a person who works with children has: behaved in a way that has harmed, or may have harmed, a child; or, possibly committed a criminal offence against, or related to, a child; or, behaved in a way that indicates they are unsuitable to work with children.
- 5.2 In such cases, appropriate and prompt consideration by relevant bodies (for example, the Local Authority Designated Officer or a Multi-Agency Strategy Meeting) should normally take place before the commencement of any processes under these procedures. In some cases, this may require consideration of a short period of suspension with pay pending initial consideration of the allegations under safeguarding procedures.

6 REFERRAL OF CASES

- 6.1 A referral to the Disclosure and Barring Service and/or the Teacher Regulation Agency may be made by the school, upon the conclusion of disciplinary proceedings (and any appeal), in the following circumstances:
 - (a) A referral to the Disclosure and Barring Service must be made if an employee has harmed, or poses a risk of harm to a child, and who has been removed from working in regulated activity, or would have been removed had they not left; or the employer becomes aware that the employee has received a caution or conviction for a relevant offence
 - (b) Schools have a legal duty to consider whether to refer to the Teacher Regulation Agency allegations of serious misconduct by a teacher when they have dismissed that teacher for misconduct, or would have dismissed them had they not resigned first.

7 DISCIPLINARY PROCEDURE

- 7.1 This procedure will be used in all cases where misconduct, omission or, in certain circumstances failure in performance is such as to warrant disciplinary action.
- 7.2 The term “misconduct” in this procedure covers instances of misconduct, omissions or failures in performance which may be reasonably attributed to wilful or negligent acts or omissions on the part of an employee. A non-exhaustive list of examples of the types of acts and omissions which might be considered under this procedure are contained in Schedule 1.

- 7.3 Where any deficiencies in performance on the part of the employee arise from a lack of aptitude or skill rather than any wilful or negligent failure to carry out their duties the Capability Procedure should normally be used.
- 7.4 Separate guidance exists for dealing with problems arising from alcohol dependence or substance abuse. However, significant problems of misconduct arising from behaviour whilst under the influence of alcohol or drugs, particularly in cases of failure to engage with support offered, may also be dealt with under this procedure.
- 7.5 In the event that this procedure is to be applied to an elected TU Officer, the local TU office will be informed.
- 7.6 Many potential disciplinary issues can be resolved informally and the academy and Trust employees should always seek to resolve disciplinary issues in the workplace. In many cases, the right word at the right time and in the right way may be all that is needed. Informal action may often be a more satisfactory way of dealing with a breach of rules than a disciplinary meeting if it takes the form of a discussion with the objective of encouraging and helping the employee.
- 7.7 In addition:
- Written guidance can be given about acceptable conduct and standards and how these have not been met. Any note of any informal action will be provided to the employee and kept for reference for no longer than 3 working months to the employees' contract.
 - In certain instances, mediation may assist in relation to disciplinary issues. In such cases, subject to the agreement of both parties, mediation can be arranged to try to settle the matter.

8 EXCLUSIONS

- 8.1 This procedure does not apply where employment is terminated by reason of non-renewal of fixed term contracts, redundancy or incapability arising from ill-health.
- 8.2 The normal management of employees and the associated processes such as performance review/appraisal are outside the scope of this procedure. There will be occasions when it is appropriate for an employee's performance and behaviour at work to be discussed with them as part of the normal management arrangements. If there is any shortcoming identified, an employee will be assisted to understand the standard of behaviour or performance required. This may be confirmed by a written instruction. By the very nature of these situations, the employee will not normally be accompanied at any meetings or discussions, although they may seek the advice of a trade union representative. Although there is no right to be accompanied at meetings in the course of normal performance management, this may be helpful and reasonable consideration will be given to any request for support from an employee's professional association. However, where the availability of a preferred representative would prevent a manager from dealing with concerns and providing appropriate support in a timely manner, it may not be possible to accommodate such a request.

9 INVESTIGATION

- 9.1 If the normal management processes do not bring about the required changes in behaviour or performance, the next step will normally be consideration of action under the formal disciplinary procedure. If it is sufficiently serious, a single instance of misconduct may be such as to warrant immediate consideration under the disciplinary procedure. Schools should seek the advice of the

Trust's Head of HR before instituting formal disciplinary action or placing an employee on suspension with pay.

- 9.2 In order to establish the appropriateness of using the formal Disciplinary Procedure, it will normally be necessary for Headteacher to commission a formal investigation. In cases relating to the Headteacher, the Governing Body should seek advice from the Trust's Head of HR regarding commissioning an investigation, and would be responsible for commissioning any investigation. If the employee concerned is a trade union official (as statutorily defined) the matter will be discussed with their branch secretary or a full time official before an investigation is undertaken. An employee who is the subject of investigation may be accompanied at any interview or similar investigatory meeting by a trade union representative or work colleague. A record should be made if the employee agrees to continue the procedure without support. The employee and any witnesses who make statements during the course of any investigation will normally be asked to check and sign any written statement of evidence.
- 9.3 The Investigating Officer's report will clearly state whether or not they believe there is a case to answer under the school's disciplinary procedures and, if they believe there is, the nature and seriousness of the alleged misconduct that needs to be further considered at a disciplinary hearing.
- 9.4 Investigations will normally be carried out by a senior member of staff. Employees/witnesses have the right to request representation by a trade union representative or work colleague, at all meetings.
- 9.5 The investigating officer will promptly carry out a full and thorough investigation into the allegations in as timely a manner as the circumstances will allow. Care will be taken to ensure that where appropriate evidence is also sought from employees/witnesses who may be supportive of the employee's case. This will involve the gathering of all relevant evidence from the relevant parties and an investigation meeting with the employee/witness.

A witness should form part of the investigation only where relevant, this could be a current or ex-employee of the Trust or an external body such as a contractor or member of the public such as a parent. Where the witness is not an employee the investigating officer should decide if the witness can provide a statement or needs to attend a meeting.

Where there is reluctance for the witness to come forward the investigating officer should carefully consider withholding or anonymising documents. Evidence should only be withheld or anonymised where there is strong reason for doing so. If the decision to anonymise documents is taken steps could include:

- a) Blanking out the witness's name and other information from which they could be identified
- b) Editing the statement to conceal the identity of the witness
- c) Where there are several witnesses' statements from different employees, prepare a summary of the information contained in the statements

Witness statements and notes of meetings will be confirmed and signed to ensure an accurate record has been taken. In addition, consent will also be confirmed to share with other relevant parties as part of evidence, if proceedings are instigated.

Any investigation will complete without unreasonable delay. The investigation may require employees and witnesses to be interviewed to establish the facts. Minutes of these meetings will be taken and agreed with the employee/witnesses a true record. Copies of the minutes will be provided to the employee/witness

The role of the investigating officer is to gather evidence and recommend whether:

- There is no further action required
- Management guidance is appropriate
- Training is required
- The case should be referred to a hearing

Where it is recommended that formal disciplinary action should be taken, the investigating officer should recommend whether the matter is potentially one of gross misconduct.

The investigation should be thorough, comprehensive and unbiased.

10 CONSIDERATION ON SUSPENSION OR RE-DEPLOYMENT

In certain circumstances it may be necessary to place an employee on suspension with pay while an investigation is carried out into the situation giving rise to concern. The Headteacher may take this action. The Headteacher will normally seek the advice of the Trust's Head of HR before taking such action and the school's Chair of Governors should be informed without delay.

If it is necessary to place the Headteacher on special paid leave, the decision must be taken by a designated member of the Trust's Executive Leadership Team.

Suspension during the course of an investigation is not in itself a disciplinary sanction and does not imply guilt. It is a neutral act. Suspension from work is normally on full pay.

10.1 Suspension with pay will normally be considered only:

- (a) Where there is a reasonable belief the employee's continued presence at work may put themselves or others at risk, or risk the school's responsibilities to other parties;
- (b) Where there is a reasonable belief that the employee's continued presence at work may hamper or compromise an investigation process; or
- (c) Where relationships appear to have completely broken down.

10.2 In all cases, consideration should be given to alternatives to suspension with pay (for example, additional supervision or alternative/restricted duties or alternative work arrangements)), remembering that consideration can be given to special paid leave at any time during the investigation. In cases of alleged gross misconduct where it is decided that suspension with pay is not necessary, the school should record that, after due consideration, it has been decided not to take this action.

10.3 Suspension with pay does not constitute disciplinary action; it is a neutral act and it will be on full normal pay. Support for an employee may be made available as set out in paragraph 17. The Trust will consider the employee's response to allegations before deciding whether to suspend, or continue a suspension where this has been necessary immediately following serious allegations.

10.4 Suspension with pay should not be unnecessarily protracted. Its continuance should be kept under regular review and immediately lifted if the circumstances of the case no longer justify it. When special paid leave comes to an end, it may be necessary to consider a re-integration plan before making arrangements for the employee's return to work.

11 DISCIPLINARY HEARING

- 11.1 If it appears, after investigation, that there is a case to consider, a disciplinary hearing will be convened. A hearing may be conducted by the Headteacher, or the Headteacher assisted by a member of the Trust central leadership team. If dismissal is a possible outcome, the hearing must be conducted by a panel of the Headteacher, member of the Trust central leadership team and a governor - the authority to dismiss is delegated to the Headteacher with the panel to advise.
- 11.2 Where it is proposed to hold a disciplinary hearing, the employee will be informed in writing, **normally at least 10 full working days in advance of the hearing**, of:
- (a) the nature of the alleged misconduct and, where it is possible to state, the warning stage which the employee has already reached;
 - (b) the date, time and place for the hearing;
 - (c) the name and position of the person presenting the case and any witnesses;
 - (d) the name(s) and positions of the person(s) hearing the case
 - (e) the employee's right to produce written statements, **normally at least two full working days before the hearing**, and invite relevant witnesses to give evidence on the employees behalf;
 - (f) the employee's statutory right to be accompanied by a trade union official or work colleague of their choice
 - (g) where a possible outcome of the hearing is that the person be dismissed, the possible outcome of the meeting.
- 11.3 **All paperwork should be issued and received by all parties as above.** Paperwork presented at a later date will be considered, at the discretion of the Headteacher/chair of the panel hearing the case, but it will not unreasonably be refused for consideration Any request by the employee for the school to make available documents for consideration at the hearing should be made in good time, in order that the above timescales can be observed.
- 11.4 Foreshortened timescales for hearing dates and issue/receipt of paperwork may be mutually agreed, for example, where a matter arises close to the end of the school year or other circumstances where it is in all parties' interests to conclude matters without delay.
- 11.5 The hearing will be conducted in as informal a manner as possible in accordance with the procedure laid down in Schedule 2.
- 11.6 The person or committee hearing the case may make a determination which is within their delegated powers. That determination may be communicated orally to the employee after the hearing, but will in any case be confirmed in writing, normally within five working days. The employee will be informed whether or not the allegations have been upheld. If the allegations are upheld, in full or in part, the findings and the decision will be confirmed in terms of:
- (a) the nature of the misconduct;
 - (b) the appropriate sanction i.e. a first or final warning or dismissal (with or without notice);
 - (c) how to appeal against the decision and/or any disciplinary sanction, the length of time within which an appeal must be lodged, and whom it should be addressed to;

- (d) If the determination is to issue a disciplinary warning, the employee will also be informed in writing of:
- i. what improvement is expected for the future;
 - ii. the length of time for which the warning is active (not usually less than three months nor greater than twelve);
 - iii. any other information in respect of the improvement required e.g. any review of arrangements, and whom the employee should contact for assistance;
 - iv. what might happen if the matter proceeds to the next stage e.g. what the possible sanction might be.

11.7 Employees will be required to sign and return a copy of any such letter confirming receipt.

12 POSTPONEMENT OF HEARINGS AND NON-ATTENDANCE

- 12.1 The date of the hearing will be postponed by up to five working days if the employee's representative is unable to attend on the specified date. The hearing will not normally be postponed more than once without good reason. Every effort will be made to agree a time and date for the hearing which is convenient for all parties.
- 12.2 Employees must take all reasonable steps to attend a hearing. A hearing will not normally be held in the absence of the employee, except by mutual agreement, unless they fail to attend a hearing without reasonable cause, are otherwise constrained from attending (e.g. they are held in custody), or as described below. Separate advice should be sought in respect of employees absent from work due to pregnancy or maternity leave.
- 12.3 Sickness will be considered reasonable cause for non-attendance where the employee's GP or medical practitioner has certified the individual is too ill to attend formal meetings, and further advice on this matter may be sought from the school's occupational health services provider. If the employee is unable to attend due to long-term sickness absence and no alternative date can be mutually agreed, the hearing may be held in their absence, but this will be avoided if at all possible.
- 12.4 It is important that every effort is made to reach a conclusion in all cases of safeguarding allegations that have a bearing on the safety or welfare of children. If an employee tenders their resignation or refuses to co-operate with the process, this must not prevent such a safeguarding allegation being followed up in accordance with safeguarding procedures. Wherever possible, the person should be given a full opportunity to answer the safeguarding allegation and make representations about it. However, it may be necessary to conduct a hearing in their absence and reach a judgement about whether the safeguarding allegation can be regarded as substantiated on the basis of all the information available. In these circumstances, the Headteacher/panel may also make a decision regarding the sanction that would have been applied had the employee remained in employment.
- 12.5 In cases where it is necessary to proceed with a hearing in the absence of the employee and it is known this will be necessary in advance of the hearing, the employee will be offered the opportunity to make additional written submissions to the hearing and/or allow their representative to make statements on their behalf at the hearing. Where non-attendance is not known in advance, after consideration of the circumstances, if postponement is not considered appropriate, the hearing

may proceed with consideration of any written submission from the employee already received and, where requested and available, appropriate contributions from their representative.

- 12.6 Similar consideration as outlined above will be given to the need to proceed with investigatory processes in the employee's absence, where this is appropriate.

13 WARNING STAGES AND DISCIPLINARY SANCTIONS

- 13.1 The Disciplinary Procedure provides for the employee to be given every reasonable opportunity to improve their conduct or performance. Unless the circumstances are exceptional e.g. gross misconduct, no employee should be dismissed without first having received at least one written warning and having had the opportunity to improve their conduct. Under most circumstances, this procedure provides for an employee to receive two written warnings for misconduct of the same or similar nature, a first warning and a final warning, before dismissal is considered.
- 13.2 Written warnings will normally remain in force for between three and twelve months, unless there is a requirement under KCSIE for a warning to remain in place for longer. This may be appropriate where there is a history of repeated breaches of the same or similar disciplinary rules, or where the misconduct is serious enough that the committee hearing the case could consider dismissal as a possible sanction. The employee may appeal against the imposition of an extended warning period.
- 13.3 In addition to the disciplinary sanction, the Trust may, in appropriate circumstances, seek to recover monies or property legitimately due to it. Reporting of cases to relevant bodies may also be necessary, as described in paragraphs 5 and 6 of the General Introduction to this document.

First Warning

- 13.4 Where an employee's misconduct is such as to warrant a formal warning, and where there is no previous warning current, a first written warning will normally be the appropriate sanction.

Final Warning

- 13.5 Where a first written warning is current any further misconduct during the currency of that warning will normally lead to a final written warning being issued. A final written warning may also be issued in circumstances where an employee is shown to have committed serious misconduct, omission, or failure in performance short of gross misconduct. It may also be appropriate where dismissal would be a reasonable sanction, but the committee or individual hearing the case has good reason to believe that a warning will prove to be effective. A final written warning will contain a clear indication that any further disciplinary offence during the currency of the warning will normally, if substantiated at a hearing, result in dismissal without further warning.

Dismissal

- 13.6 If further allegations of misconduct are brought while a final written warning is current, the committee or individual hearing the case will normally determine that the employee shall be dismissed, unless there are strong mitigating circumstances (subject to conclusion of a full investigation in accordance with this procedure). The committee or individual hearing the case in these circumstances may alternatively in appropriate circumstances determine to extend the final warning for a further period, normally between three and twelve months.

- 13.7 If the allegations against the employee are so serious that they would constitute gross misconduct (see Schedule 1, paragraph 21), the committee or individual hearing the case may determine that the employee shall be dismissed without notice, even where no formal disciplinary sanction is current.
- 13.8 A decision that an employee shall be dismissed, with or without notice, may only be taken by an appropriate committee (or individual) empowered to do so under this policy and procedure.

Alternatives to dismissal

- 13.9 In some cases, alternatives to dismissal may be considered at the headteacher's / panel's discretion, which will usually be accompanied by a final written warning. Examples include, but are not limited to:
- (a) Transfer to another department or job, or another school within the Trust'
 - (b) Recommendation for mediation between parties.

In all cases, advice should be taken from the Trust's Head of HR.

14 APPEALS

- 14.1 An employee is entitled to appeal against any disciplinary sanction imposed. If the sanction has been imposed by the Headteacher, the appeal will be to a member of the Trust executive leadership who has not previously been involved in the case. Where the appeal is against dismissal, the appeal panel will consist of three members not previously involved in the case and will include a two members of the central leadership team.
- 14.2 An employee who wishes to appeal against a disciplinary sanction must lodge notification of their intention to appeal along with full grounds for their appeal (including any supporting documentation) within 14 days of the date of written notification of that sanction, as directed in the letter of notification.
- 14.3 A date for an appeal hearing will normally be arranged and notified to the parties within 14 days of an appeal being registered. All parties will normally be given at least 10 days' notice of the date of the appeal. Any further submissions from those responding to the appeal should normally be provided to the school (or the manager hearing the appeal) at least three working days before the appeal hearing, to enable them to be circulated to the parties in good time before the hearing.
- 14.4 The main grounds for an appeal are likely to be, although are not limited to:
- (a) if the employee wishes to contest the finding and/or the disciplinary sanction;
 - (b) if new relevant evidence not available to the original hearing becomes available;
 - (c) if there is an alleged lack of fairness in the original hearing.

If the appeal is against the finding and the sanction imposed by the original hearing, the appeal will be about how the original hearing did not come to a fair judgement. If the appeal is against the disciplinary sanction only, the Appeal Committee may agree with the appellant and the employees representative that they will hear submissions in mitigation of the sanction.

- 14.5 The procedure for the conduct of an appeal is set out in Schedule 2. An Appeal Committee may uphold the original finding and sanction; uphold the original finding but modify the sanction (only in

the most exceptional case will the severity of the original sanction be increased); or not uphold the finding and therefore remove the sanction.

15 RECORDS AND LAPSED WARNINGS

- 15.1 Advice given in the course of normal performance management and records of any allegations, complaints and subsequent investigatory or disciplinary processes all form part of an employee's employment history. As such, it is important that proper records are retained, in accordance with the data protection legislation and the recommendations within the ACAS Code of Practice. Furthermore, where an allegation relates to the safety and welfare of children, there is a requirement to retain a clear and comprehensive summary of any allegations made, details of how and who followed up the allegation and any resolution and conclusion. This record must be retained at least until the person attains normal retirement age or for a period of 10 years from the date of the allegation if that is longer. This includes people who leave the organisation.
- 15.2 As such, although a disciplinary warning may be deemed to have 'lapsed' after the period of the warning has expired, the record of the disciplinary matter should not be removed from the employee's employment history/personal file held by the school. This applies equally to cases where a disciplinary complaint against an employee is withdrawn, or is found to have been mistakenly initiated, although a clear record of this outcome should be prominent in the papers retained. Although expired warnings remain on file, they would not form part of any reference.
- 15.3 Allegations that are found to be malicious should be removed from the employee's employment history/personal file held by the school, and any that are unsubstantiated, are unfounded or malicious, or have lapsed, should not be referred to in employer references.

16 HEADTEACHERS

- 16.1 In schools the responsibility for the conduct and discipline of employees at the school will be part of the Headteacher's responsibility. Where there is a concern or complaint about misconduct on the part of the Headteacher, it will normally be the responsibility of a member of the Trust leadership team to initiate any necessary action. Chairs of Governors will be informed. Advice will be taken from the Trust's Head of HR before instigating any formal disciplinary action or placing a Headteacher on suspension with pay.
- 16.2 If there is sufficient cause for concern, the member of the Trust leadership team may instigate an investigation into all the material facts and circumstances of the complaint or concern. This investigation will be carried out in confidence. The report will be considered by the member of the Trust leadership team and any recommendations of that report, and will decide what action is to be taken.
- 16.3 If the member of the Trust leadership team considering the report decide that the matter should be considered under the formal disciplinary procedure, the matter will be considered by the member of the Trust leadership team. If dismissal is a possibility, two members of the Trust leadership team will be involved alongside the chair of governors. The procedure will be conducted as for all other employees. The Chief Executive will consider any appeals.

17 ADVICE AND SUPPORT TO EMPLOYEES

- 17.1 In most cases employees subject to allegations or complaints being dealt with under this procedure will seek the advice and support of their trade union representative. However, employees may

address questions about procedure, the conduct of investigations or hearings, or other related matters to the Headteacher and/or the Trust's Head of HR.

- 17.2 It will normally be appropriate to make arrangements for a nominated individual to keep the employee informed of developments and to offer support, particularly in cases where the investigation is prolonged, the employee has been placed on suspension with pay, pending investigations. This should be arranged through a suitable senior member of the school's staff who is not involved in the investigation or procedure in any other way. The name of a nominated individual will normally be notified to the employee.
- 17.3 Employees, including witnesses, should also be encouraged to access support available through the school's participation in any well-being service, for example, the Employee Assistance Programme, or their own GP, as necessary.

18 GRIEVANCE COMPLAINTS

- 18.1 If an employee wishes to raise a grievance during the disciplinary process, this should be addressed in writing to the Trust's Head of HR, who will decide what action should be taken, and their decision in this matter will be final. Depending on the nature of the grievance, this may be to temporarily suspend the disciplinary process to allow the grievance to be considered. Complaints about the conduct of the disciplinary process will not normally be dealt with under the grievance procedure, but can be raised during the disciplinary hearing and any subsequent appeal.
- 18.2 In cases where the grievance raised is unconnected to the disciplinary matter, it may be appropriate for this to be considered under grievance procedure running in parallel with disciplinary procedures.

19 CRIMINAL OFFENCES

An allegation of a criminal offence committed outside of work will not be treated as an automatic reason for disciplinary action. Consideration needs to be given to what effect any warning, caution, charge or conviction has on the employee's suitability to do their job and their relationship with the school, the wider Trust, work colleagues and the school community. Where it is felt necessary to investigate the matter, consideration will be given to whether or not this can be completed before the outcome of any criminal investigation/prosecution is known. In all cases, advice should be taken from the Trust's Head of HR.

20 EXAMPLES OF POTENTIAL MISCONDUCT

It is not possible to specify all forms of behaviour that will result in disciplinary action. Each case must be judged in the light of the circumstances and context surrounding it. Varying circumstances may well allow different disciplinary actions or no disciplinary action at all to be taken for what are similar offences.

Misconduct is where an employee breaks specific rules about behaviour or conduct. It is where conduct falls below expected standards and is usually wilful. There may be occasions when negligent conduct amounts to misconduct. Breaches of reasonable conduct at work can take many forms. The list of behaviours which may be considered as forms of misconduct below is not exhaustive and there may be other examples relating to particular jobs where disciplinary action may be warranted following a thorough examination of the circumstances involved. Consideration will always be given to the particular circumstances.

Gross misconduct is a term used to describe misconduct which is so serious it may destroy the employment contract between the employer and the employee and make further working relationships and trust impossible. Also, below are examples of the sorts of conduct that could be regarded as gross misconduct, rendering the employee liable to summary dismissal.

Employees should, so far as is reasonably practicable, be familiar with the working rules and procedures relating to their own school/department and their particular area of work. These rules may be in the form of codes of practice, school policies and procedures, induction material, manuals, posters, notices and periodic memoranda and failure to have due regard to these may be grounds for disciplinary action in relation to general misconduct or professional negligence.

Examples of potential Misconduct

- Misuse of school and /or Trust facilities such as internet and email
- Poor time keeping
- Unauthorised absences from work
- Persistent and frequent absenteeism and failure to follow notification procedures
- Failure to follow reasonable management instructions
- Failure to improve faults of a similar nature, that build into a pattern of unacceptable behaviour, performance or attitude
- Deliberately undermining the achievement of the team, school or Trust goals
- Wilful failure to adapt to changing technologies, methods and patterns of work (as distinct from inability to adapt which is dealt with under the capability procedure)
- Insubordination – i.e. failure to comply with reasonable management instructions - Wilful neglect of duty
- Breaches of safety regulations and safe working practices
- Petty theft or embezzlement whilst at work
- Deliberately falsifying work records
- Being unfit for duty through drink or drugs (other than those which have been medically prescribed)
- Sexual misconduct at work including indecent behaviour, offensive behaviour or sexual harassment
- Discrimination against pupils, employees or members of the public on grounds of their colour, race, disability, ethnic origins, sex, sexual orientation, age, marital status or religious beliefs - Fighting, physical assault or threatening behaviour towards a pupil, fellow employee or member of the public

- Bullying, abusing or threatening behaviour towards pupils and other employees Wilful damage to or concealment of official records
- Improper disclosure of written or verbal information which is clearly identifiable as confidential
- Knowingly aiding and abetting a disciplinary offence
- Knowingly making false or malicious statements about other employees or members of the Local Governing Body or Trust Board
- Deliberate failure to report evidence or suspicion of any impropriety or breach of procedure of the part of another employee
- Wilful non-compliance with Data Protection principles
- Smoking on academy/Trust premises

Examples of Potential Gross Misconduct

- Dishonesty, including theft, fraud or deliberate falsification of records or acceptance of bribes
- Stealing from the academy, Trust, members of staff, pupils or the public
- False claims for expenses or overtime
- Other offences of dishonesty
- Substantiated allegations in relation to child protection issues
- Harassment or abuse of any person, whether or not an employee, on grounds of race, gender, sexual orientation, religious belief, disability, marital status, age, gender reassignment or ethnic origin, or deliberate discrimination on such grounds
- Deliberately misusing, damaging academy or Trust property
- Providing false information to support an application for employment, this includes, but is not limited to falsification of qualifications necessary for the post
- Serious insubordination or wilful disobedience, including serious act(s) or persistent repetition of a failure to comply with a reasonable instruction
- Physical violence or bullying against other employees, pupils or members of the public
- Misuse of the academy's / Trust's property or name, or bringing the school or Trust into disrepute
- Deliberate and or inappropriate use of school's or Trust's computer equipment/software; including deliberately accessing internet sites containing pornographic, offensive or obscene material - Inability to perform duties or improper conduct as a result of being under the influence of alcohol or drugs (other than those which have been medically prescribed)
- Corrupt or improper practice for private gain
- Causing loss, damage or injury through serious negligence
- A serious breach of health and safety rules
- A serious breach of trust and confidence
- Breach of any professional code of conduct applicable to the job which could bring the profession or the Trust into disrepute - Misuse of official position for personal gain
- Relevant criminal offences. However, criminal offences should not be treated as automatic reasons for dismissal regardless of whether the offences are relevant to the individual's employment. The main consideration should be whether the offence is one that makes the individual unsuitable for this type of work. Employees should not be dismissed solely because a charge against them is pending or because they are remanded in custody
- Engaging in other employment during the employee's contracted working hours for the academy/Trust

21 SOME REASONS WHICH MIGHT JUSTIFY DISMISSAL WITH NOTICE

As distinct from gross misconduct, for which the normal sanction is dismissal without notice, dismissal will normally only take place after due warning through the disciplinary procedure. However, there are a limited number of circumstances which fall short of gross misconduct where

the governing body may determine that an employee shall cease to work at the school without prior warning being issued. These are circumstances where the action of the employee has broken the mutual trust and confidence necessary to sustain the employment relationship. The following is a non-exhaustive list of circumstances which may give rise to such a determination:

- (a) Behaviour of a serious or criminal nature outside employment the nature of which makes continued employment impossible.
- (b) Committal to prison for an offence which might not justify dismissal but is of such a kind, or entails a sentence of such length, as to make continued employment impossible.
- (c) Irretrievable breakdown of trust and confidence between the school or the central Trust Executive Leadership and the employee.

Depending on the seriousness of such matters, dismissal without notice may also be considered.

This policy and procedure is non-contractual and may be updated from time to time following consultation through the Trust's JCNC arrangements.

22 PROCEDURE FOR A HEARING

Hearings will be held in as informal a manner as possible and the employee will be afforded every reasonable assistance to put their case forward. The conduct of the hearing is at the discretion of the chair hearing the case, but the chair will allow the parties every reasonable opportunity to present their case.

In the case of an appeal the order of presentation set out below would normally be reversed, with the employee as appellant presenting their case first. However, by prior agreement or where the appeal constitutes a re-hearing of the full case, the case against the employee may be presented first as at the initial hearing. Chairs hearing appeals should ensure that all parties have a common understanding and agreement on the order of presentation.

1. Introduction

The Headteacher / Chair hearing the case will ensure that those present are introduced to each other and that they are aware of the procedure to be followed.

2. Presentation of the Allegations

The person presenting the case against the employee may make an opening statement outlining the case. The person or committee hearing the case and the employee responding to it may ask questions.

The employee will then call any witnesses and ask them to give their evidence. The employee or their representative may then ask questions of each witness. The person or committee hearing the case may also ask questions of any witness. The person presenting the case may then re-examine the witness.

Where evidence is presented in the form of documents, the person presenting the case or an appropriate witness will explain the nature and significance of the documents.

3. The Employees Case

The employee or their representative may make an opening statement. The person or committee hearing the case and the person presenting the case against the employee may ask questions.

The employee may call any further witnesses and invite them to give their evidence. The person presenting the case against the employee may ask questions of each witness after they have given their evidence. The person or committee hearing the case may then ask questions. The employee or their representative may re-examine the witness.

Where there is any documentary evidence, the employee or any witness on their behalf will explain its significance.



4. **Re-examination**

Both parties will be asked if they wish to re-examine any evidence. The person or committee hearing the case may also do so at its discretion.

5. **Final Statements**

The person presenting the case against the employee may make a final statement. The employee or their representative may then also make a final statement.

6. **Adjournment**

Either party may ask for an adjournment at any stage. The decision to adjourn is at the discretion of the Chair, who will consider a request in the light of the reason given for it.

7. **Consideration of the Case**

All parties will withdraw. The Headteacher or the committee will deliberate. An HR advisor may be present at these deliberations to advise on procedural matters.

If it is necessary to recall either party or any witnesses, to resolve a point of uncertainty, both parties will be invited to be present, whether or not the point of doubt concerns one party or both.

8. **Decision**

Where possible, the decision will be communicated orally to the employee after the hearing. The decision will be confirmed in writing to the parties involved as soon as possible after the hearing has concluded, normally within 5 working days.

Further Advice

If any staff, contractor or visitor requires any further information regarding this policy or support they should either ask their Headteacher or contact the HR Helpdesk at hrhelpdesk@unitysp.co.uk or telephone 01440 333401.