



BrightTribe
learn grow prosper

Disciplinary Policy and Procedure

September 2018





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1. Introduction

Every member of staff has a role to play in both achieving and sustaining the highest standards of conduct and performance. This Procedure is designed to ensure that employee's conduct meets the standards required of them and to ensure that employees are treated fairly and consistently and in line with relevant legislation. One of its primary aims is to encourage a permanent improvement in the employee's conduct.

This procedure should be read in conjunction with the guidelines in Appendices B-D if disciplinary action is to be taken.

2. Policy Statement

The Trust aims to ensure that in complying with both legal requirements, and acting as a reasonable employer, that a fair and equitable process will be adhered to in progressing disciplinary matters. Adopting this approach will:

- Allow disciplinary matters to be dealt with quickly.
- Set standards of conduct at work.
- Ensure that employees are aware of the standards expected of them.
- Treat all employees on an equal basis.
- Maintain good employee relations.
- Reduce the likelihood of arbitrary decisions by managers.
- Assist the Trust in operating effectively.
- Apply appropriate disciplinary measures where needed.

3. Scope of Procedure

The procedure will be applied consistently and equitably in respect of the conduct of all employees of the Trust.

The standards of behaviour contained within this procedure also apply to sub-contractors and people providing services to the Trust, as well as to people on work experience. The procedure relates to disciplinary action and/or dismissal on conduct.

Dismissals for any other reason, for example ill health, redundancy or non-renewal of a fixed term contract are dealt with by way of separate procedures. The procedure does not apply to the management of issues relating to capability alone (to whom a separate procedure applies).

Although the procedure identifies the sanctions to be used its aims are to, wherever possible, facilitate an improvement in conduct.

The procedure recognises the importance of informal intervention aimed at improving/changing conduct. Wherever possible, problems should be resolved through an informal process, once facts have been established. Minor conduct issues can often be resolved informally between employees and their line manager.

A quiet word is often all that is required to improve an employee's conduct or performance. These discussions should be held in private and without undue delay whenever there is cause for concern. Where improvement is required make sure the employee understands what needs to be done, how their performance or conduct will be reviewed, and over what period. It may be useful to confirm in writing what has been decided.

The line manager should keep brief notes of any agreed informal action for reference purposes. In some cases an informal instruction may be given, which will not form part of the disciplinary records but could take the form of a Letter of Expectation. Records of informal action should be retained on the employee's personnel file for 6 months and then expunged. A copy will be given to the employee. Formal steps will be taken under this policy if the matter is not resolved informally, or if informal action is not appropriate (for example, because of the seriousness of the allegation). Any matter dealt with informally may be referred to as part of any disciplinary proceedings.

4. Procedure

Disciplinary action will not be undertaken until the facts have been established. For issues, which are of a minor nature or where the facts are not in dispute, a fact gathering exercise will take place prior to taking a decision on whether or not to progress to a disciplinary meeting.

In more serious cases, including gross misconduct, it may be necessary to undertake a separate investigation and interviews to decide whether or not to proceed with a disciplinary meeting, unless the modified procedure applies, (see below).

Under the Employment Act 2002, there are two forms of statutory dismissal and disciplinary procedure: a standard (three-step) procedure and a modified (two-step) procedure. The Trust already adopts the three-step procedure, in disciplinary cases, whereby an employee is advised of the allegation(s) against him/her, is invited to attend a meeting to discuss the issue and finally has the right to appeal. In limited circumstances the Trust will apply a modified procedure in which an employee will be dismissed immediately for gross misconduct but will be given the right of appeal.

This modified procedure will only be applied where it is reasonable to dismiss the employee before enquiring into the circumstances in which the conduct took place. Such situations will be rare.

In determining the disciplinary action to be taken, managers should be aware of the need to satisfy the test of what is reasonable and must ensure that each case is investigated thoroughly, and all the relevant facts are taken into account.

If managers are unsure of any aspect of implementing the disciplinary procedure they should contact Trust HR, the Principal and or Senior Manager for advice and guidance.

Child protection issues must be dealt with through a separate process. Disciplinary action should only be taken once the schools safeguarding policy procedures have been completed.

4.1. Rights of Representation

- Employees may be assisted and accompanied by either a member of a recognised Trade Union of which they are a member, or by a work colleague, during disciplinary, meetings and /or appeals. They should be given the opportunity to be accompanied at any meeting in which disciplinary action is contemplated. The representative or union colleague will be able to ask general questions during the meeting.
- Disciplinary action will not be taken against accredited representatives of Trade Unions until the circumstances have been notified to a full-time official of the Trade Union, or, if agreed, a senior lay official.

It is the responsibility of management to take this action. Accredited Trade union colleagues may also be represented by a full-time officer of their union at formal disciplinary proceedings.

- Employees will be allowed to be accompanied by a trade union colleague during all stages of the disciplinary procedure formal or informal.
- Legal representation is not acceptable on either side at any stage within this procedure.

4.2. Timescales

The date of receipt of an allegation or complaint will be recorded. This includes the date when an allegation or complaint becomes construed as a disciplinary matter following the initial fact gathering exercise.

The investigation will, wherever possible, be completed within 28 working days. Protected time for this will be at the discretion of the Principal and/or senior manager. However, in particularly complex situations or where circumstances determine an investigation will take longer, then the employee/representative/union colleague should be informed, and a revised timescale agreed.

Where at the request of the Police an investigation is halted the timescale will commence at the resumption of the investigation.

4.3. Suspension

The Academy reserves the right to suspend an employee from work at any stage of the procedure. However, suspension does not in itself constitute disciplinary action nor is it a presumption of guilt. It should be noted that this is a neutral action, separate to any disciplinary procedure.

A decision to suspend an employee should not be a default reaction, and careful consideration must be taken in order to demonstrate that suspension is reasonable.

When considering whether or not to suspend an employee:

- Identify whether there is a term in the contract of employment which provides the employer with an express right to suspend;
- Engage fully with the individual in order to determine their version of events regarding the allegations prior to a suspension (witness statements are always useful);
- Consider whether there are any available alternatives to suspension, and whether suspension is warranted;
- Full documentation should be kept of the reasons given for any suspension; and
- Ensure the employee is kept informed regarding the investigation on a regular basis.
- If suspension is considered appropriate, the suspending manager should refer to the suspension checklist. Suspension is not a disciplinary sanction, nor does it indicate that a decision has been taken.

If there is an allegation which is considered to affect the wellbeing of pupils, the Designated Safeguarding Officer should be informed and should confirm whether suspension is necessary.

Suspension will be on usual contractual pay, terms and conditions. Suspension should only take place in certain circumstances, for example, where relationships have broken down, or where there could be risks to individuals or property or responsibilities to others, or to allow any investigation to go on unhindered. Re-deployment should be considered as an alternative to full suspension, wherever possible. An employee cannot be suspended without authorisation from Principal, Vice Principal or senior Trust staff member and in some cases the Designated Safeguarding Officer.

The employee will be advised to contact a representative and asked to attend a meeting at which suspension may occur. The appropriate suspending manager will confirm the suspension in writing immediately. Confirmation will include:

- Reason for suspension and the fact that it should not be construed as disciplinary action
- Duration of suspension – should be up to 10 working days in the first instance and will not exceed 56 working days unless there are exceptional circumstances
- Restrictions regarding access to premises during suspension
- The fact that the employee should not discuss the case with their colleagues
- Agreed arrangements for contact with the Principal/Vice Principal, senior Trust staff member or another agreed point of contact during the period of the suspension
- Proposed arrangements for handling the matter
- The fact that such suspension is on usual contractual pay
- The fact that the contract of employment still applies – including conditions relating to secondary employment
- The requirement to remain contactable between 09:00 and 17:00 Monday – Friday to facilitate the investigative process and to attend pre-arranged meetings. The requirement to advise both the investigating manager and the representative of any holidays.
- Whether any pre-booked annual leave is authorised during the suspension period.

The Principal/Vice Principal or senior Trust staff member [in the case of non-academy based staff] should inform the Chair of Drive Team, Trust HR and in some cases the COO/CEO as soon as practicable of the suspension. Wherever possible, the case should be discussed with the relevant Trust HR Advisor in advance of any suspension occurring.

In addition, the suspending manager/ should inform either school or the Trust IT services that a member of staff has been suspended and with approval from the Principal or senior Trust staff member, withdraw any access to school and Trust data.

The respective line manager may be appointed as the appropriate point of contact for the employee within the Trust if the employee so wishes and will ensure that this point of contact is aware of the situation and maintains appropriate contact with the employee throughout the period of the suspension. If the respective line manager has any concerns regarding stress of the suspended staff member, then the line manager should refer the employee to their GP.

During the suspension the employee should not instigate contact with colleagues at work, or colleagues at home to discuss the case, except in some cases where it may be necessary for the employee to visit the workplace to prepare a case or as described above. In such cases, arrangements will be agreed between the Principal/Vice Principal or senior Trust staff member, the appropriate line manager and where appropriate union representative.

An individual will not usually be suspended from duty for longer than 56 calendar days. Should the complexity of the investigation – or any other exceptional circumstances – prolong the period of suspension beyond this, the individual should be fully informed of the situation and every effort be made to complete the investigation as soon after this time-scale as possible. The individual has the right to ask for a full explanation if their period of suspension extends beyond 56 days.

The suspension should be reviewed as the investigation progresses to determine whether or not it remains appropriate. This should take place after the first two weeks and fortnightly thereafter to review its appropriateness. The appropriate union colleague should also be informed.

5. Investigation

The date of receipt of an allegation or complaint will be recorded. This includes when an allegation or complaint becomes construed as a disciplinary matter. Investigations will be carried out by a person(s) with no involvement in the case. The appointed investigation panel will be selected and will include a senior Trust staff member and senior HR Advisory support to enable the investigation to commence no later than 5 working days after receipt of the allegation as a guide.

In certain circumstances, due to the nature of the allegation(s), it may be appropriate to appoint an impartial investigator. It is important that an investigation of the facts of the case is undertaken to establish whether there may be a case to answer. Every attempt will be made to conclude an investigation as quickly as is reasonably possible (normally within fifteen working days other than for particularly complex cases) - particularly in the case of an individual who is suspended whilst the investigation is carried out - although the need for thorough consideration of all the relevant facts is paramount.

The employee under investigation and their representative will be kept informed of the progress of the investigation and will be given a contact for information (usually the appointed investigating officer) should they require it.

For issues that are of a minor nature and where the facts are not in dispute, investigation may take place within the disciplinary meeting. In such circumstances, the maximum disciplinary sanction is a first written warning.

All statements taken as part of the investigation should – unless circumstances are exceptional - be signed and dated by the individual concerned in order to ensure accuracy.

It is the role of the appointed investigation panel, who would not be involved in any subsequent disciplinary meeting – with advice from the Trust HR Advisor – to decide whether or not there is a prima facie case (i.e. on face value, there is a case) to answer and to agree appropriate action – which may include arranging training or recommending a disciplinary meeting. The outcome of this meeting will be notified to the individual in writing. A disciplinary meeting cannot be convened until this investigation has concluded except for a matter of a minor nature or where the facts are not in dispute.

All documentation that was collated as part of the investigation will be shared with the individual, their representative and the investigation panel (unless it is mutually agreed that a particular document should be excluded or there are exceptional circumstances warranting its non-disclosure). However, disciplinary decision-making will be based on the evidence specifically referred to and presented within the meeting.

In extreme circumstances, e.g. bullying and harassment allegations, consideration will be given to anonymity. This will be discussed and agreed with the union colleague.

Employees will be allowed to be accompanied by a trade union colleague during all stages of the investigation formal or informal.

6. Disciplinary Action

The procedure is designed to be a series of progressive warnings to employees and to incorporate at each stage the opportunity to improve conduct.

Oral Warning recorded in writing

- First Written Warning
- Final Written Warning
- Dismissal

However, it may be necessary in certain circumstances involving serious or gross misconduct, or where an employee is still within their probationary period for the procedure to be adapted and to move immediately to a Final Written Warning or to consider Dismissal. Managers may, in certain circumstances, wish to consider supplementary action/redeployment.

If the investigation suggests there is a case to answer, the employee will be sent:

- a summary of the allegations
- a copy of all documentation that was collated as part of the investigation (unless it is mutually agreed that a particular document should be excluded or there are exceptional circumstances warranting its non-disclosure), which should include the names of any witnesses to be called by management.
- notification of the time and date of any disciplinary meeting
- notification of the right to be accompanied

Where there is a possibility that the hearing will result in a final written warning or dismissal the above should be given to the employee, wherever possible, in advance of the scheduled meeting.

Names of witnesses to be called on behalf of the employee, and any documentation to be referred to at the meeting, should wherever possible be supplied to management at least 5 working days prior to the date of the meeting.

Attempts to find a date and time for the disciplinary meeting which is convenient for all parties will be made. If the date for the meeting turns out to be inconvenient then the employee or the employee's representative should notify the HR Advisor in writing immediately and a new meeting will be arranged.

It is important that employees attend the disciplinary meeting. If an employee fails to attend a disciplinary meeting without reasonable excuse the disciplinary meeting may proceed in that employee's absence.

In the event of a decision to dismiss relating to the harm or risk of harm to children or vulnerable adults the Academy has an obligation and reserves the right to refer the employee to the Disclosure and Barring Service. This will only be actioned after the process has been concluded including an appeal stage should the employee invoke this right.

7. Disciplinary Meeting

The hearing officer/chair of panel manager will be responsible for ensuring that all of the arrangements for the hearing are made and that the employee receives the appropriate paperwork and notice of the hearing. At the disciplinary meeting the employee will have the right to be accompanied by a union representative or work colleague. The purpose of the meeting is to give the employee the opportunity to present their version of events and any points the employee would like the disciplinary panel to take into account, including mitigating factors.

The disciplinary panel will consist of a Chair/Disciplinary Manager from the Trust and senior HR members who have previously not been involved in the process. For all meetings a note taker will attend to take minutes of proceedings. It is their role to minute the significant points of the hearing and the decision of the panel but not to produce a verbatim record. We may, at our discretion, allow the employee to bring an additional companion who is not a colleague or trade union representative (for example, a member of family) as a reasonable adjustment if the employee has a disability, or if they have difficulty understanding English. (The Trust will arrange for and provide an interpreter. The employee should request this as soon as possible and without delay.)

Ten working days written notice of the date, time and place of the disciplinary hearing will be given to provide the employee with a reasonable amount of time to prepare their case based on the information that they have been provided with. If this does not allow sufficient time to prepare or to obtain representation, then the employee can make an application to the hearing officer/chair of panel to seek an extension. The hearing officer/chair will then consider if the extension is reasonable under the circumstances. propose an alternative time for the meeting to take place and so long as the alternative date and time is reasonable and preferably within five working days after the original scheduled date, the meeting will be postponed. The employee will be provided with all written documentation related to the complaint at least ten working days before the hearing

The HR Advisor will be present in an advisory capacity and can also advise on the constitution of the panel prior to the disciplinary meeting.

Wherever possible, the role of the Disciplining Manager will be undertaken by a more Senior Manager at progressive stages of the Disciplinary Procedure.

The hearing officer/chair of panel hearing officer/Panel may find that there is no case to answer and disregard the allegations taking no further action. Or they may refer the case back to an informal process. Alternatively the hearing officer/chair of panel they may choose to give the employee a disciplinary warning.

The employee may be informed of the outcome of the hearing verbally, but the outcome will be confirmed in writing within two calendar weeks, Any documentation related to the hearing will be completed quickly dated and signed by the employer and provided to the employee and representative normally within five working days.

Employees will be notified of the length of time during which their warning will remain current.

Unless circumstances are exceptional, warnings should cease to be "live" following the specified period of satisfactory conduct and should be expunged from the records.

Warnings will generally remain "live" on an employee's record for the following periods of time;

Oral warning – up to 13 weeks

First written warning – up to 26-weeks

Final written warning – up to 52 weeks

Thereafter, it should not be used or referred to in any further disciplinary action and will be expunged from their personnel records. Any records relating to safeguarding matters will remain on the employee's personnel file

The outcome of the hearing will be recorded in a letter on the employee's personnel file. The letter will detail:

- The reason that the warning was issued together with a summary of the employee's and his / her representative's comments.

- The improvements required and the period over which they are expected.
- Any action necessary by management to assist achievement of improved conduct, for example, attendance on a training course.
- That any further act of misconduct or a failure to achieve the required level of conduct may result in further disciplinary action.
- The period of time the warning will remain on file.
- The fact that the employee chose to be accompanied at the hearing and by whom or, if appropriate, the fact that they chose not to be accompanied.
- A copy of this letter will be sent to both the individual and their representative if one was present at the hearing and the HR Advisor.

Employees can request to view their personnel file by writing to the CEO. Employees can either request to see the entire file or specific records within the file.

8. Gross Misconduct

Gross misconduct is a serious breach of contract and includes misconduct which, in the opinion of the trust, is likely to prejudice its business or reputation or irreparably damage the working relationship and trust between the academy / trust and the employee. Gross misconduct will be dealt with under the Disciplinary Policy and may lead to dismissal without notice or pay in lieu of notice (summary dismissal).

In some instances, offences which would normally constitute gross misconduct may be considered as misconduct because of mitigating circumstances. Similarly, issues which would normally be treated as misconduct may, in certain circumstances, be considered so serious that they constitute gross misconduct. (see Appendix)

9. Employee ill health during the disciplinary process

The fact that an employee is not fit to attend work due to illness will not necessarily mean that the disciplinary procedure will be postponed and relevant factors will be taken into account in each case to determine whether it is appropriate to proceed or not. These may include, but are not limited to, the following:

- What is the reason for the employee's absence?
- The impact of delaying the disciplinary process on the employee and/or other employees.

The employee may be asked to attend a medical assessment with an occupational health professional in order to determine if the employee is fit enough to attend a disciplinary hearing. The Trust will ask the occupational health professional to recommend any reasonable adjustments in order to accommodate the employee at the disciplinary hearing, e.g. location of the meeting, time of the meeting, enabling a family member to attend as a companion.

If an employee is persistently unable to attend a hearing under this procedure for health reasons the Disciplinary Chair may have to take a decision based on the available evidence. Each case will be looked at on an individual basis in consultation with HR.

If the employee chooses not to attend the hearing, or is unable to do so (for example for health reasons) they may choose to send a written statement for consideration at the hearing.

10. Appeals

10.1. Requesting an Appeal Meeting

Where a disciplinary warning has been issued, supplementary action has been taken, or an employee has been dismissed, the employee will have an entitlement to appeal against the decision. The member of staff must request such an appeal, in writing, stating the grounds of the appeal, to the Principal / senior manager within 5 working days of notification of the disciplinary action (unless there are exceptional circumstances which must be agreed by the Principal). Please note that where an employee involved in the disciplinary procedure has a disability or literacy difficulties, alternative arrangements can be agreed.

In the case of a First Written Warning the appeal should normally be heard within 28 working days of the receipt of the appeal letter, or as soon as reasonably practicable. In the case of an appeal against a Final Written Warning or Dismissal, due to the senior level of personnel and potentially ARC members required to hear the appeal it may be difficult to arrange an appeal meeting within this timescale. In such cases an appeal meeting will wherever possible take place as soon as reasonably practicable after receipt of the appeal letter.

Normally and wherever possible the manager who will hear the appeal in the case of a First Written Warning will be heard by a manager who is immediately senior to the manager taking the disciplinary action, with HR Advisor present acting in an advisory capacity. In the case of a Final Written Warning, the appeal may be heard by the Principal/ senior manager with the support of the HR Advisor acting in an advisory capacity, or by an ARC team member if appropriate. In the case of an appeal against dismissal, a panel should consist of at least two ARC members (where possible three), with an HR Advisor present in an advisory capacity.

The members of the appeal panel shall not include any member of the Trust who has been directly involved in the circumstances leading to disciplinary action.

The appellant may be accompanied by a union representative or colleague acting in a personal capacity at the hearing.

The following documentation will be provided at least 7 calendar days prior to the appeal date:

- The documentation supporting the management case – which will include a summary of the facts considered at the hearing and the reason(s) for issuing the warning.
- Any documentation supporting the employee's case.

In the event that, since the disciplinary decision was taken, new evidence or information has come to light, it is a requirement that the appeal panel are made aware of this information - and the fact that it was not available at the disciplinary meeting - at least seven calendar days prior to the meeting. New information should not be introduced at or immediately prior to the appeal meeting.

10.2. Purpose of the Appeal Meeting

The function of an appeal meeting is to ensure that decisions of managers on disciplinary matters (which give rise to appeals) have been taken in accordance with the Trust's agreed disciplinary procedures, and that, following a thorough investigation and consideration of the circumstances of the case; the decisions were reasonable and fair. Appeal meetings are not re-hearings, but rather an opportunity to review the decision

made at a disciplinary meeting, it is therefore inappropriate in most circumstances to re-call witnesses at appeal meetings.

The appeal committee is not a court of law. It is intended to provide an objective appraisal of the way in which the disciplinary decision was made. When an appeal meeting has taken place at the appropriate level, the outcome is final and no further appeal is available.

11. Procedure for Hearing a Disciplinary Appeal

At the appeal meeting, the following procedure shall be followed:

The appellant or their representative will summarise the reasons for their dissatisfaction with the disciplinary decision. The Disciplining Manager will be present during this summary and will have the opportunity to ask questions of the appellant and their representative. The appeal panel will also have the opportunity to ask questions of the appellant and their representative.

The Disciplining Manager will summarise the management case, presenting the facts considered at the disciplinary hearing and the reasons for issuing the disciplinary warning / dismissal. They will focus on the issues raised as a concern by the appellant or their representative. The appellant and their representative will be present during this summary and will have the opportunity to ask questions of the Disciplining Manager. The appeal panel will also have the opportunity to ask questions of the Disciplining Manager

The appellant or their representative and the Disciplining Manager will have the opportunity to sum up their case if they so wish. The appellant or their representative shall have the right to speak last. In their summing up, neither party may introduce any information that was not included in their original statement.

New evidence will not normally be admissible on the day. If either the Disciplining Manager or the appellant produces new evidence on the day, the panel may at their discretion, adjourn the appeal in order to consider whether the new evidence is admissible. The panel may at their discretion adjourn the appeal for any other reason.

The Disciplining Manager, the appellant, the appellant's representative and any witnesses will withdraw to allow the appeal panel to consider the facts of the case. The appeal panel may uphold or rescind the original disciplinary action, or it may issue a lesser or greater penalty as appropriate. It may also request that a full re-hearing be convened; in this case however, no further right of appeal will apply.

The decision of the appeal panel may be confirmed to the appellant verbally following the hearing, but will be confirmed to the appellant in writing within 2 calendar weeks of the appeal. This decision is final.

12. Police Enquiries

If an employee is arrested, charged or summoned for questioning in relation to any alleged offence, they must inform their manager in writing as soon as reasonably possible. This includes employees whose job involves driving, who must inform their manager in writing if charged with a driving offence. Failure to do so will be considered as misconduct and appropriate disciplinary action may be taken. Any action taken after notification will be dependent upon the relationship of the alleged offence to the duties undertaken. Advice can be obtained from the HR Advisor.

Where conduct is the subject of a criminal investigation, charge or conviction the facts will be investigated before deciding whether to take formal disciplinary action. Disciplinary action will not be automatic and will

depend upon the circumstances. A criminal investigation relating to conduct outside work may be treated as a disciplinary matter if we consider that it is relevant to the employee's employment.

Where employees are unable or have been advised not to attend an investigation meeting or disciplinary hearing or say anything about a pending criminal matter, a decision may have to be made based on the available evidence. In exceptional circumstances the Trust may be given authorisation to proceed with disciplinary procedures from the LADO or police. Where this occurs the normal disciplinary procedure will be followed.

Disciplinary action may be taken if the alleged conduct has, on the balance of probabilities, occurred and is relevant to the nature of the employee's employment, affects their ability to carry out their duties, is likely to bring the Trust into disrepute, or undermines the Trust and confidence between employer and employee.

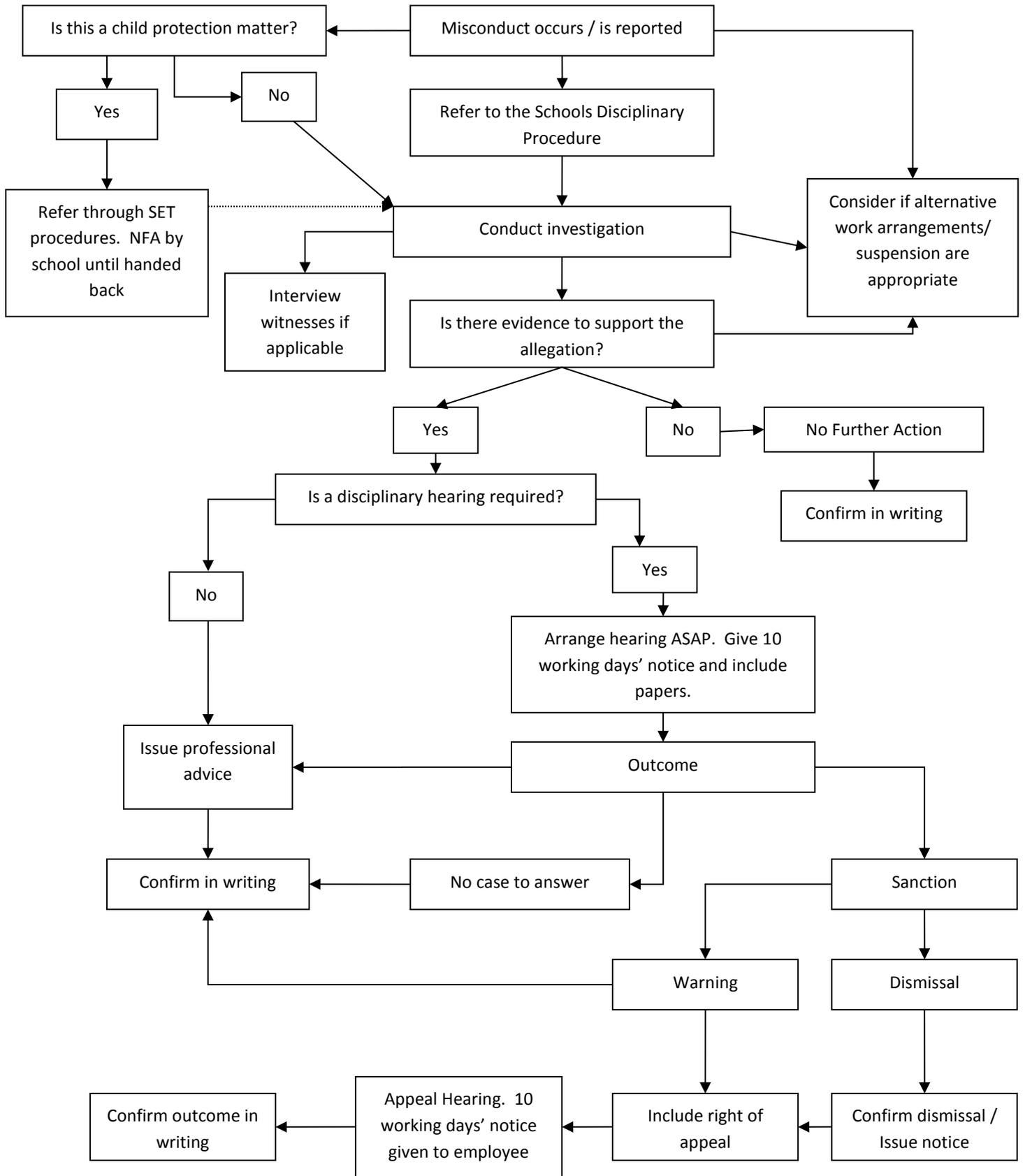
Confidentiality

It is the aim of the Trust to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat any information communicated to them as confidential in connection with an investigation or disciplinary matter, save for disclosure to their representative. All investigation papers and any subsequent disciplinary outcomes, appeals will be dealt with in the strictest confidence.

Employees, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure policy without prior consultation and agreement. If recordings are permitted, the employee will be required to share recordings with the employer.

13. Review of policy

This policy is reviewed annually in consultation with the recognised trade unions. We will monitor the application and outcomes of this policy to ensure it is working effectively. The trustees takes seriously its responsibilities in respect of equality monitoring and will monitor the equality impact of this policy in respect of all protected characteristics as defined under the Equality Act 2010.



Appendix A – Disciplinary Procedure Flow Chart

Appendix B – Disciplinary Guidelines

Listed below are the types of issues which could result in disciplinary action being taken. The lists are neither exclusive nor exhaustive and there may be actions which do not appear but may nevertheless be the subject of disciplinary action.

In determining the seriousness of the misconduct, particular regard will be given to the circumstances of the individual case. Factors which can influence a decision as to the seriousness of the offence may include:

- the type, degree and frequency of the misconduct
- the consequences arising from the misconduct, and
- the level of responsibility of the employee concerned

Careful consideration will be given to the above factors in each case. There may be situations where misconduct which would normally lead to summary dismissal may warrant less serious action. Similarly, there may be situations in which misconduct which would not normally lead to summary dismissal warrants such action.

Misconduct

Examples of misconduct where a form of warning may be issued, or where cumulative or repeated acts could lead to dismissal are as follows:

- Attendance and Time-keeping
 - continuing failure to comply with attendance and time-keeping requirements
 - continuing failure to follow procedures for booking and returning from leave
 - absenteeism and unauthorised absence from the workplace
- Behaviour
 - refusal or failure to follow a legitimate management instruction
 - inappropriate behaviour or abuse of authority towards a colleague or member of the public or person in the care of the school/academy
 - insubordination
 - failure to comply with policies and procedures
 - abuse of the policies and procedures
 - conduct at work which is likely to offend decency
 - conduct which could bring the employer into disrepute
 - negligence in the performance of duties
 - misuse of facilities
- Poor Working Practices
 - failure to maintain proper records

- failure to follow procedures e.g. financial regulations, standing orders
- failure to comply with health and safety requirements
- General
 - misconduct in relation to official documents e.g. destroying or mutilating records, altering/erasing or adding to entries without legitimate reason
 - neglect of health e.g. committing an act or adopting conduct which may impede recovery and return to work whilst absent from work due to sickness
 - engaging in paid employment outside the hours contracted to work without the employer's express permission
- Conduct outside of the workplace which impacts on the employer, for example
 - Serious driving offences, particularly those involving alcohol or drugs
 - Serious offences involving gambling
- Any other act of misconduct of a similar gravity

Gross misconduct

Gross Misconduct is defined as misconduct of such a serious nature that the employer is justified in no longer tolerating the employee's continued presence at the place of work.

- Unauthorised removal of property
- Stealing/theft from the school/academy, its governors, its employees or the public and
- other offences of fraud or serious dishonesty
- Sexual offences/misconduct (including serious misuse of the internet)
- Breaches of the Equality and Diversity policy, including serious acts of harassment, discrimination or verbal abuse against employees, clients or members of the public on grounds of race, sex, disability or religious belief or any other grounds
- Fighting / Physical assault / offences involving violence
- Possession of prohibited firearms, knives or other weapons
- Harming pupils (as defined by the Children's Act 1989, as amended)
- Abuse of Trust relating to pupils within the school
- Establishing inappropriate relationships with children or young people, including through social networking sites
- Falsification of time sheets or subsistence/expenses claims, sickness self-certification etc.
- Other offences which seriously threaten the security of the pupils, members of the public, employees or property or which seriously damages public confidence in the employer
- Deliberate misuse of data protection information and/or deliberate interference with computerised information

- Falsification of qualifications which are a stated requirement of employment and which result in financial gain
- Malicious damage to property, arson and other major criminal damage
- Serious breaches of Health and Safety legislation and/or the Health, Safety and Welfare Policy e.g. intentional or reckless interference with or misuse of anything provided by the employer in the interests of health and safety.
- Serious drug/alcohol related offences
- Serious breaches of the policy on use/misuse of the internet/data records
- Serious breaches of the Code of Conduct
- Failure to disclose any relevant criminal offences prior to employment and any criminal convictions which occur during employment
- Any other act of misconduct of a similar gravity

Appendix C – Conduct of Disciplinary Hearing

Conduct of a Disciplinary Hearing

Preliminaries

- a) The employee will have been notified in writing of the allegation(s) and the right to representation.
- b) Those present will be as follows:
 - The disciplinary manager/Panel to hear the case
 - Investigating Officer - to present the case
 - Employee (and representative)
 - Witnesses called by either side (not in the room until called)

- HR Adviser
- Note taker
- c) The employee, representative and the investigating officer will enter the room together, when invited to do so.

The Hearing

- a) A member of the disciplinary manager introduces all parties, and outlines the procedure.
- b) The investigating officer presents the facts of the case and may call witnesses.

Questioning of witnesses proceeds in the following order

- Investigating Officer questions, the witness
- Employee or Representative question the witness
- Disciplinary manager may question the witness
- Witnesses leave the room at the conclusion of their evidence and examination.
- c) The employee/representative may seek clarification from the investigating officer.
- d) The disciplinary manager may seek clarification from the investigating officer.
- e) The employee/representative has the opportunity to respond and may call witnesses.

Questioning of witnesses proceeds in the following order

- Employee or representative question the witness
- Investigating Officer question the witness
- Disciplinary manager may question the witness
- f) The investigating officer may seek clarification from the employee.
- g) The disciplinary manager may seek clarification from the employee.
- h) The investigating officer sums up the management case (no new evidence may be introduced).
- i) The employee/representative sums up (no new evidence may be introduced).
- j) All retire from the room except the disciplinary manager (and any relevant employees if present in an advisory capacity).
- k) The disciplinary manager considers the evidence and determines whether the allegation(s) are proven before considering any previous live disciplinary record. Only when considering what level of disciplinary action is appropriate should previous proven live disciplinary matters be taken into account.
- l) Before reaching a decision, the disciplinary panel may recall the parties to clarify points and/or adjourn for further investigation if required.
- m) The employee/representative and the investigating officer are invited to return and are informed of the decision and, in proven cases, the employee's right of appeal.
- n) The decision and the right of appeal are confirmed in writing within 5 working days.

Appendix D – Conduct of Disciplinary Appeal Hearings

Conduct of a Disciplinary Appeals Hearing

Preliminaries

- a) Those present will be as follows:
 - o The appeal manager to hear the case
 - o Disciplinary manager (and investigating officer if required) - to present the case for the disciplinary manager
 - o Appellant (and representative) – to present the case for the appeal
 - o Witnesses called by the appeals panel
- b) The appellant, representative and the investigating officer will enter the room together, when invited to do so.

The Hearing

- a) A member of the appeal panel introduces all parties, and outlines the procedure.
- b) The appellant presents the grounds for the appeal and their case for overturning the original disciplinary decision.
- c) Witnesses called by the appeal manager that originally gave evidence in support of the appellant are called at this point.

Questioning of witnesses proceeds in the following order

- Investigating officer or disciplinary manager (not both) question the witness
 - Appeal manager may question the witness
- d) The Investigating officer / disciplinary manager may seek clarification from the appellant.
 - e) The disciplinary manager may seek clarification from the appellant.
 - f) The Investigating officer / disciplinary manager put forward the case for the disciplinary decision.
 - g) Witnesses called by the appeal manager that originally gave evidence in support of the investigating officer's / disciplinary manager's case are called at this point.

Questioning of witnesses proceeds in the following order

- Appellant or representative (not both) question the witness
 - Appeal manager may question the witness
 - Investigating officer / disciplinary manager (not both) may question the witness
- h) The appellant or representative may seek clarification from the investigating officer / disciplinary manager.
 - i) The appeal manager may seek clarification from the investigating officer/ disciplinary manager
 - j) The appellant or representative is afforded the opportunity to summarise their case (no new evidence may be introduced).

- k) The investigating officer / disciplinary manager sums up (no new evidence may be introduced).
- l) All retire from the room except the appeals panel (and any relevant employees if present in an advisory capacity).
- m) The appeals manager considers the evidence and determine whether to uphold the decision of the disciplinary manager and if so whether the level of disciplinary sanction was appropriate.
- n) Before reaching a decision, the appeals panel may recall the parties to clarify points and/or adjourn for further investigation if required.
- o) The employee/representative and the investigating officer / disciplinary manager are invited to return and are informed of the decision. There is no further right of appeal.
- p) The decision is confirmed in writing within 5 working days.



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