



**Shaw
Education
Trust**

Disciplinary Policy

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1.0 Policy Introduction

The purpose of this policy is to help and encourage all employees to achieve and maintain standards of conduct with consistency and fairness in the way that disciplinary matters are handled.

Any reference to 'the employer' refers to Shaw Education Trust. This policy applies to employees of the Trust, regardless of length of service, but does not form part of the contract of employment and can be varied from time to time and in consultation with the recognised trade unions.

No disciplinary warning shall be given unless the procedure has been followed in full. The Trust recognises that failure to follow these procedures could cause an employment tribunal to decide that a dismissal was unfair. However, it also provides part of these procedures, other than statutory requirement, may be varied in a particular case by mutual, explicit agreement between the employee and the Trust.

The Trust Board delegates the function of hearing disciplinary cases to Line Managers and Headteachers, according to the delegated accountability as set out in this policy and the hearing of appeals. It will ensure that no one is a member of both the disciplinary and appeals hearing.

Copies of this policy should be made available to all employees to whom it applies.

The procedure does not apply to ex-employees.

2.0 Scope

This policy applies to all school and Trust-based employees (teaching, non-teaching, including Headteachers and C-Suite colleagues).

In cases where allegations are made against the Headteacher, the role normally undertaken by them will be carried out by an employee nominated by the CEO. In such circumstances advice must be sought from the Head of HR before any action is taken.

This policy should not be used for:

- Concerns relating to poor performance; in these circumstances the Capability Procedure should be referred to.
- Concerns relating to an employee's capability due to ill health. Always refer to the Attendance Management policy and guidance should be sought from your People Advisor.
- Non-teaching employees in their probationary period.

Action against Trade Union Representatives

Disciplinary action against Trade Union Representatives can lead to serious disputes with the Unions and the Trust.

While normal disciplinary procedures apply to a Trade Union representative's conduct as an employee, the relevant full-time official or Senior Lay Officer should be notified of any action (including suspension) that Shaw Education Trust proposes to take.

All reasonable efforts must be taken to ensure that disciplinary action is not taken against a Trade Union Representative until the full time official or Senior Lay Officer has had the opportunity to be present at any stage of the formal procedure.

3.0 General Principles

This policy does not form part of the terms of the employees' contract with Shaw Education Trust.

The policy takes into account current employment legislation, good practice and the appropriate provisions of the ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice.

The requirements of the Equality Act 2010 have been fully incorporated into this policy. Reasonable adjustments will be considered on request to enable employees to fully participate in the process.

At any stage in the process, following investigations, the Designated Person may invoke an alternative policy. All parties will deal with issues promptly and not unreasonably delay meetings/hearings, decisions or confirmation of decisions.

Where a meeting/hearing needs to be rescheduled, it can normally only be rescheduled once. A new date must be agreed within 5 working days of the original date. The actual meeting/hearing need not be within those 5 days but should be as soon as possible.

All matters will remain confidential at every stage in accordance with the Data Protection Act 1998, except in circumstances where there is a legal obligation to disclose such information.

Employees must be informed of their right to be accompanied by a work colleague or trade union representative at any suspension, investigation interview, disciplinary hearing and appeal hearing as appropriate.

The employee must be informed of their right to appeal against a decision made during the formal process.

The final appeal hearing exhausts the internal process.

All formal records and copies of correspondence will be retained on the employee's personnel file.

If an employee lodges a grievance relating to the disciplinary matter, then the grievance will be dealt with at the same time as the disciplinary process if appropriate and the cases are related. Some flexibility will be given to allow the grievance to be heard and the disciplinary process paused if appropriate.

4.0 Informal Discussions

From time-to-time aspects of conduct may need to be discussed with an employee on a one-to-one basis where appropriate. Such discussions should take place informally and should not be constrained by, or come within, the scope of this policy, nor shall advice given in this informal way count as warnings within the scope of this policy. The nature of the discussion should be made known to the employee.

Should information emerge during informal discussions which could subsequently require the matter to be dealt with under the formal disciplinary procedure, the employee should be notified immediately. The Principal/Line Manager should speak to their People Advisor and arrange for the matter to be investigated separately under section 5 below.

If the Principal/Line Manager feels it is necessary to record informal discussions about aspects of conduct, a written record of the conversation should be made and a copy should be given to the employee concerned, in the same way notes can be made of other aspects of employees' work such as development of performance /support plans etc.

Informal discussions should not be noted in the employee's file; however, any documentation of these conversations should be kept separately and confidentially. This documentation, referred to as a letter of concern, serves as a memorandum. A letter of concern is a document provided to the employee to indicate that their performance has not met the required standards and improvement is necessary.

However, this will not be documented as a formal sanction. Instead, it will be kept confidential, and the duration for which the letter of concern will remain on file will be specified in the letter

5.0 Investigation

Fact Finding

A short preliminary assessment known as fact finding where an allegation has come to light should be made in order to establish if there are reasonable grounds for a full investigation and to establish the basic facts. This may involve viewing CCTV footage, checking records, taking action to secure computer records. Always seek advice from the People team in the first instance.

Employees should be informed when allegations are being considered under the disciplinary procedure and invited to comment as soon as any alleged misconduct concerns come to light.

In exceptional circumstances where external agencies are involved, the Principal/Line Manager may be unable to disclose the details of the allegations to the employee. In cases of alleged gross misconduct, suspension should be considered as a last resort and without prejudice.

It is important at this stage to review which is the most appropriate Trust policy in the circumstances (e.g. Whistleblowing, Anti-Fraud & Bribery, Respect and Dignity at Work, Professional Conduct).

The preliminary assessment should be carried out as soon as possible after the matter is brought to the Principal/Line Manager's attention. A decision should be made without undue delay as to whether the matter should be fully investigated under the formal process as set out below. Your People Advisor must be informed of all cases proceeding to formal investigation.

Informing the Employee of Alleged Misconduct.

The employee should be notified in writing of the allegations and that a formal investigation under the disciplinary procedure will occur. The notification should also include the name of the appointed Investigation Officer and whether the allegations constitute misconduct or gross misconduct

The Investigation Officer will be supported in the investigation process by a member of the People team. The Investigation Officer will conduct the interview with the colleagues against whom the misconduct is alleged along with a note taker from the People team.

Formal Investigation

No disciplinary action will be taken against a colleague until a formal investigation to establish the facts of the case has taken place. The purpose of the investigation is to establish the facts whilst they are still clear in the minds of those involved, and to decide what further action to take. The colleague may be accompanied by a Trade Union Representative or work colleague.

****It is the employee's responsibility to arrange appropriate representation within the timeframes quoted.***

The Investigating Officer should invite the employee in writing to an investigation meeting giving 7 working days' notice by written notification

The Investigation should be carried out in accordance with the investigation procedure pack promptly and without unnecessary delay. The Principal/Line Manager should nominate another Senior Leader to act as the Investigating Officer who has been trained. Where no suitable person can be identified the Principal/ Line Manager should seek advice from the Human Resources team to identify an alternative Investigation Officer within the Trust.

Where reasonable, the investigation should be carried out as soon as possible. However, the employee will be informed by the Investigating Officer if the investigation is delayed by providing the reasons for delay and giving regular updates as the investigation progresses.

It is the role of the Investigating Officer to determine whether there is a case to answer and or if there is a potential case for Gross Misconduct. It is **not** their role to suggest what the outcome of the hearing should be.

Where it appears the employee's conduct has been, or is being affected adversely by ill health, action under this process may be suspended pending medical advice. Advice should be sought from the People team on action to be taken in such cases.

Advice and guidance contained in Keeping Children Safe in Education (KCSIE) and the Academy/Trust Safeguarding policy and associated guidance for schools must be followed when an employee is suspected or accused of child abuse.

Advice in the associated guidance should be followed when interviewing a young person in respect of any allegations being investigated.

Other than child protection cases, if there are witnesses to the allegations, witnesses should be interviewed and signed and dated statements obtained at the earliest opportunity. Witnesses must be informed that any information put forward may be used during the disciplinary hearing.

Where an employee is absent due to sickness, advice should be sought from the People team. Normally the process of the investigation can proceed as far as interviewing the witnesses or employee concerned.

When the investigation is complete, the Principal/Line Manager who commissioned the investigation with support from the People team, shall consider the results (including any adjustments that may have been made during discussions) and decide and whether the facts:

- Do not warrant further action.
- Amount to a situation which can be resolved by informal discussions in accordance with section 4.0 as above or
- Warrant a formal disciplinary hearing in accordance with these procedures.

Following the conclusion of an investigation process, an employee, with advice from their Trade Union representation, may accept a disciplinary sanction without being subject to the full normal procedure. This is called an 'agreed outcome'. In accepting an agreed outcome, an employee will forego their right of appeal. The principal/line manager must seek guidance from the People Team before proceeding with an agreed outcome.

6.0 Suspension

If the allegation is considered so serious that it may amount to gross misconduct or the individual is considered a risk to others, they may be informed that they are suspended on full contractual pay pending further investigation. HR advice will need to be sought and authorisation by the Head of HR or Chief People Officer after completing a suspension checklist form. Suspension may also be necessary in other circumstances e.g. where the employee would be able to access evidence or influence witnesses.

Whilst a decision on suspension is being taken, an employee may be asked to go home and not attend work or be temporarily redeployed, usually for a maximum of 48 hours.

Unless a meeting is impractical (due to the employees' absence due to sickness or other good reason) the employee will be informed in a meeting of the decision to suspend, and written confirmation of the

decision shall be given to the employee at the meeting or sent immediately after the suspension is notified. The suspending officer will outline the reasons for suspension and invite the employee to comment.

In cases where allegations relate to child protection procedures, the employee will be informed simply that allegations have been made and that no details can be discussed at the meeting. Depending on the response the suspending manager may or may not adjourn the meeting before deciding whether or not to suspend the employee. If the decision is to suspend then the suspending manager should arrange for the employee to leave the premises.

If a meeting cannot proceed due to sickness absence or other good reason, depending on the serious nature of the allegations, the Principal / Line Manager will invite the employee to a meeting upon their return to work. In exceptional circumstances where there are allegations such as safeguarding and financial irregularities, the Principal/Line Manager may consider informing an employee of the serious allegations while they are absent from work and that suspension will apply upon their return to work.

The suspension will be reviewed periodically (typically every 2 weeks) to consider whether circumstances surrounding the suspension have changed. A Welfare Officer should be appointed to maintain contact at appropriate intervals as a duty of care and maintaining the employee's wellbeing.

Suspended employees must make themselves available for interviews under the procedure and must not take alternative employment while the contract of employment still applies. They must make themselves available for all meetings that may be required in the course of their employment and notify the school of the intention to take holidays in the same way they would if attending work.

If appropriate employees may be asked to return property belonging to the Trust/Academy and/or have access to online systems suspended, and/or refrain from visiting the Trust/Academy premises.

Where an employee falls sick during a period of suspension, the normal certification requirements, reporting and continual sick pay entitlements will apply.

When returning to work following a period of suspension, appropriate support should be given to the employee to help them reintegrate back into their role, by their Line Manager (if suitable) or a nominated colleague with the correct skills and experience to do so.

7.0 Procedure for Hearing Disciplinary Cases

On receipt of the investigation report, if the Principal/Line Manager who commissioned the investigation decides on the basis of the information available (with HR advice), that there is a case to answer and a disciplinary hearing is required, the Principal/Line Manager shall either appoint a Disciplinary Hearing Chair or conduct the hearing themselves (depending on level of seniority). A People Advisor must be informed immediately.

The Disciplinary Hearing Manager should invite the employee in writing to a disciplinary hearing giving 7 working days' notice by written notification. The letter should include whether the allegations constitute misconduct or gross misconduct and the possible outcomes of the disciplinary hearing.

Please refer to your People Advisor for the relevant documentation and template letters

The employee may suggest an alternative time and date as long as it is reasonable and is not more than 7 working days' notice after the original date.

The employee must advise the Disciplinary Hearing Manager of the following at least 48 hours in advance of the hearing.

- The name of their Trade Union Representative or work colleague
- Provide any written documentation to be considered.
- The names of any witnesses they wish to call.
- Any special requirements (e.g. disability, language requirements)

****See Appendix 2 for the Management of the CEO and C-Suite disciplinary procedure***

At the Disciplinary Hearing:

- The Investigation Officer will present their findings.
- The employee, their Trade Union representative/work colleague, and the hearing manager will be able to question the investigation officer.
 - The employee may ask their representative/colleague to do this on their behalf.
- The hearing manager will be able to question the employee.
- The employee, their trade union representative/colleague will be able to question any witnesses, if appropriate.

- Both parties will summarise their case
- The hearing manager will adjourn the meeting and start deliberations.

The Disciplinary Hearing Manager should announce their hearing decision in person (if dismissal the employee should be informed the same day, as the decision is made) or receive it subsequently in writing. The choice should not prevent the hearing manager from choosing to adjourn and reconvene before making a decision. The final outcome will be confirmed in writing within 5 working days of the hearing to include:

- The sanction (if any) and the period it will remain current.
- The reasons for the decision
- The change in behaviour required (if relevant) and the likely consequences of further misconduct.
- Right of appeal.

8.0 Disciplinary Sanctions

Where an employee has been found to committed misconduct the disciplinary chair/panel may decide to issue one of the following sanctions:

- **Letter of Concern** (6 or 12 months depending on circumstances) – misconduct is not sufficiently serious to warrant a higher level of disciplinary sanction, or the mitigating evidence provided has been considered and a lower level of disciplinary sanction is justified.
- **First Written Warning** (12 months)- Where misconduct has occurred.
- **Final Written Warning** (12 months or 18 months (depending on severity of misconduct) – Where serious misconduct has occurred or where there is repetition of an offence despite a previous warning.
- **Dismissal** – Where an employee has still not reached the level required or where there are continued breaches of conduct despite previous warnings. Or when gross misconduct has occurred

Action short of dismissal may be considered as an alternative to dismissal, with the agreement of the employee concerned. For example, a final written warning and disciplinary demotion to a lower pay grade with no pay protection and/or transfer to an alternative role within the academy or wider trust. This is subject to a suitable role being available and the individual circumstances of the case. The employee should notify the

Disciplinary Hearing Manager within 3 working days of their decision. It should be noted that there is no entitlement to this outcome and that if the outcome is put forward but not agreed by the colleague then the dismissal would take effect.

Warnings will take effect from the date of the outcome letter and will be disregarded for disciplinary purposes after 6 or 12 months for a letter of concern, after 12 months for a first written warning and after 12 or 18 months for a final written warning unless otherwise stated. If during this period similar offences or further misconduct occurs, any live warnings will be considered. Once spent the disciplinary warning will be removed from the employee's personal file.

All disciplinary sanction decisions will be made to the employee in writing and be delivered by email, First Class Recorded Postal delivery and First-Class Postal delivery.

A decision to dismiss should only be taken by persons who have the authority to do so (*see appendix 2*). The employee will be informed of the reasons for dismissal, the appropriate period of notice, the date on which the employment contract will end and the right to appeal. Unless a colleague is being dismissed for reasons of gross misconduct, they should receive the appropriate period of notice or pay in lieu of notice.

A letter of concern, first or final written warning should set out the nature of misconduct and the improvement that is required. The employee should be told how long the warning will remain live and failure to improve or further misconduct in that timescale could lead to further disciplinary action being taken.

9.0 Appeal

The employee has a right of appeal against a decision to issue a warning or to dismiss. Appeals against formal warnings or dismissal should be made in writing within 5 working days of the receipt of the written decision and be addressed to the Chair of the disciplinary panel. The appeal will be heard by an appoint Appeals Manager and can either; confirm the sanction, reduce the sanction, or overturn it.

The employee will need to outline one or more of the following grounds for appeal:

- There was a flaw in the procedure applied.
- Not all relevant evidence has been considered.
- The sanction or decision is too severe.

- New evidence has come to light since the sanction or decision which have materially changed the outcome of the hearing.

The employee must provide the rationale or evidence in respect of the grounds identified. This, and all other evidence for consideration, will be circulated to all involved with the appeal hearing before it takes place.

All appeal hearing will be held as soon as practicably possible and not normally later than 2 weeks after receipt of the appeal.

The chair of the disciplinary hearing will attend the appeal. The Appeal Manager would not have had any involvement in the case beforehand.

The employee will be given 5 working days' notice in writing of the date of the appeal hearing. The notification will detail the name of the person chairing the hearing and the names of the panel members. A member of the People Team will attend the meeting to provide procedural advice.

Both parties must indicate at least 3 working days in advance of the appeal hearing, which if any witnesses they wish to call and provide copies of any documentation that will be relied upon. In exceptional circumstances an alternative time scale may be agreed (e.g. due to sickness, personal circumstances or annual leave/school closures)

The Appeal Manager will:

- Review the decision and the evidence from the original hearing.
- Review any further evidence that may be relevant.

Rehearing

If an appeal relates to a flaw in the original hearing procedure, the Head of HR may advise a rehearing occurs in place of the appeal hearing.

If this is the case, the hearing will follow the original procedure hearing with another Disciplinary Hearing Manager. The possible outcomes will be consistent with the appeal hearing procedure.

The outcome of the appeal will be confirmed in writing as soon as possible and usually within 5 workings days of the hearing being concluded. There is no right of further appeal against such a decision of the Appeal Manager.

Where the Appeals Panel overturns a decision to dismiss or to issue a written warning, they may substitute a lesser sanction. There is no right of appeal against such a decision of the Appeals Panel.

In the event that the Appeal Panel decides not to uphold the decision to dismiss, the notice of dismissal shall be immediately withdrawn and the employee reinstated without loss of pay.

No referral to external agencies will be made until the appeal process has been exhausted (e.g. Teaching Regulation Agency/DBS)

If the employee or companion are unable to attend the hearing, we will reschedule the hearing to take place within the following 5 days or as soon as practicable.

The employee will receive notice of the rescheduled meeting date in writing.

If they are not able to attend the revised date without just cause, we will dismiss the appeal and the employee will have no further right to appeal. Unless the employee is too unwell to attend then the appeal may still proceed in the absence of the employee.

10.0 If a Criminal Offence has been committed.

Certain criminal offences may affect an employee's suitability to continue in their role with Shaw Education Trust or damage the reputation of the Trust. If an employee is charged with a relevant criminal offence they must inform their manager as soon as possible. We will not treat notification about criminal proceedings, or a conviction (including bind-overs and cautions), as an automatic reason for dismissal or for any other form of disciplinary action being taken. We will decide what action to take, if any, after we have reviewed the matter. The main consideration should be whether the conviction is one that potentially makes an employee unsuitable for their job or affects Shaw Education Trust's reputation.

If an employee is subject to a criminal investigation, Shaw Education Trust will determine to what extent it needs to conduct its own investigation before deciding whether to proceed to formal disciplinary action. Shaw Education Trust will not usually wait for the outcome of any prosecution before deciding what action to take (unless specifically advised otherwise by the Police) . No decision to impose a disciplinary sanction or dismiss will be taken prior to giving an employee the opportunity to make representations.

If we have reasonable grounds to suspect that the potential misconduct involves fraud, systems abuse, theft, or any financial irregularity, we will notify the internal auditors and/or the police as soon as possible.

Appendix 1 – Examples of Misconduct & Gross Misconduct

Breaches of reasonable conduct at work may take many forms. The following list is not exhaustive and there may be other examples appropriate to the nature of a particular job which would warrant disciplinary action following a thorough examination of the circumstances involved:

Examples of Misconduct

- Minor breaches of Trust and Academy policies.
- Minor breaches of an employee's contract.
- Damage to, or unauthorised use of, Trust property.
- Repeated poor timekeeping.
- Unauthorised absence from work.
- Refusal to follow instructions.
- Excessive use of Trust telephones for personal calls.
- Excessive personal e-mail or internet usage.
- Obscene language or other offensive behaviour.
- Wilful negligence in the performance of duties.
- Undertaking additional employment outside normal working hours without authorisation

Examples of Gross Misconduct

The following are examples of gross misconduct, but this list is not exhaustive:

- Unauthorised disclosure of confidential information
- Convictions relating to activities outside work, but which have a significant and direct bearing on employment and duties with Shaw Education Trust and its reputation.
- Misrepresenting at any time, including at appointment with the Shaw Education Trust, any previous positions held, qualifications, date of birth, declaration of health, or a failure to disclose a criminal offence or pending criminal action subject to the provisions of the Rehabilitation of Offenders Act 1974.
- Behaviour prejudicial to the good name or interests of the Trust or which may bring the employee or the Trust into disrepute.
- Repeated unauthorised and unreasonable absence from the place of work.
- Breach of trust and confidence
- Fraudulent practices
- Falsification of any records

- Violent or threatening behaviour towards people or property on the Trust's premises or at a Trust related event
- Covertly recording hearings, meetings or colleagues
- Making any sexual or other inappropriate contact with any pupil whatever the age of the pupil
- Discrimination, harassment or victimisation on the grounds of protected characteristics as defined in the Equality Act of 2010
- Bullying, harassment or victimisation, whether verbal, written, photographic, pictorial or physical
- Serious breaches of the Trust's IT user and social media and internet related policies
- Using social media (e.g. blogs, Facebook, Twitter etc.) to post derogatory or offensive comments about the Trust, work colleagues, or third parties with which the Trust has an operational relationship.
- Any misappropriation of files or documents belonging to the Trust of any kind or making copies, duplicates or excerpts of these for private or any other purposes unrelated to an employee's employment and without consent.
- Theft or unauthorised removal of property, fraud, falsification of the Shaw Education Trust's records, misappropriation or any other dishonesty
- Actual or threatened violence or bullying behaviour.
- Deliberate or serious damage to the Shaw Education Trust's property or that of an employee, customer, contractor or authorised visitor
- Serious negligence which does or could result in loss, damage or injury.
- Being under the influence of alcohol, drugs or other similar substances at work which may give reasonable grounds to suspect ability to undertake duties or being in possession of illegal or intoxicating drugs on site.
- Refusal to obey reasonable instructions or any other act of serious insubordination.
- Serious breach of health and safety rules

Appendix 2 – Management of CEO and C-Suite

1.0 Line Management Structure

- C-Suite is line managed by the Chief Executive Officer (CEO).
- The CEO is line managed by the Chair of the Trust Board.
- The Nominations & Remuneration (Noms & Rems) Committee is responsible for the appointment and dismissal of the CEO, subject to ratification by the Trust Board where necessary.

2.0 Handling Concerns or Performance Issues

2.1 Any concerns regarding the performance, conduct, or behaviour of a member of C-Suite must be addressed by the CEO, following the standard disciplinary procedures outlined in this policy. If the concern relates to the CEO, it must be raised with the Chair of the Trust Board.

2.2 The Chair of the Trust Board must escalate any significant concerns regarding the CEO's performance or conduct to the Chair and Deputy Chair of the Nominations & Remuneration Committee for consideration.

3.0 Investigation Process for the CEO

3.1 Where possible, any investigation into the CEO's conduct or performance should be carried out by an independent external investigator to ensure impartiality.

3.2 The Nominations & Remuneration Committee (or a designated sub-group) will oversee the investigation process, ensuring it is conducted fairly and in line with due process.

4. Disciplinary Hearings and Dismissal of the CEO

4.1 If a disciplinary hearing is required, it will be conducted by a panel appointed by the Trust Board, which may include members of the Nominations & Remuneration Committee, along with independent representation where appropriate.

4.2 The final decision on any disciplinary action, including dismissal of the CEO, rests with the Nominations & Remuneration Committee, in line with the Trust's governance policies and procedures



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**Act with
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**Be
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**Be best
in class**

**Be
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