

# Disciplinary Policy

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## **Disciplinary Policy**

### **1. Purpose**

The purpose of this procedure is to set out the standards of conduct expected of our colleagues and to ensure that all disciplinary matters are dealt with fairly and consistently.

The Staffordshire Schools Multi Academy Trust is committed to supporting and retaining individuals who have the right motivation, skill and experience to make a positive contribution to the Trust's success and the delivery of high quality education.

The Trust is committed to achieving this through:

- Setting high standards of expectation consistent with the school community expectations of our Trust and relevant professional standards;
- The application of consistent and fair procedures in accordance with good practice and equal opportunities;
- Adhering to the employment legislation and guidance in relation to dispute and conduct.

This procedure does not deal with performance or sickness absence issues as these are dealt with under separate policies.

### **2. Scope**

This procedure applies to all colleagues including volunteers, temporary, fixed term staff, apprentices and casual staff regardless of length of service. This procedure does not form part of your contract of employment and may be varied from time to time.

The Board of Directors will liaise with the local authority and other agencies in the application of this procedure where required.

### **3. Responsibilities**

Any reference to 'the Trust' refers to The Staffordshire Schools Multi Academy Trust. The appropriate level of authority will be determined according to the Trust's decision-making structure at Appendix 1.

### **4. Accountabilities**

The CEO is accountable for ensuring that managers are appropriately trained to implement this procedure and that a sufficient level of investigation is carried out prior to any formal disciplinary action being taken.

The manager, CEO, Director, or the panel conducting a hearing is accountable for the decision of the hearing and must ensure that the formal disciplinary procedure has been followed. Any determination made must be evidenced as fair in all of the circumstances and that any formal action which is taken is reasonable, taking into account previous conduct and any mitigating circumstances.

Managers investigating allegations against staff must establish the facts of the matter and present all information obtained during the investigation in a fair and unbiased way. The investigating manager is not involved in any formal decision making under this procedure, however, the investigating manager may issue an informal warning if an investigation identifies only minor disciplinary breaches which do not require progression to a hearing under this procedure.

All colleagues have a responsibility to be aware of and conduct themselves in line with the Trust's policies, the law and maintain acceptable standards of conduct and behaviour. Where relevant, colleagues must adhere to codes of practice or standards associated with their profession, trade or occupation. Colleagues must also cooperate with disciplinary investigations as required. The aim of the procedure is to set out and maintain the required standards of conduct and encourage improvement.

## **5. Guiding Principles**

The following guiding principles will apply:

**Safeguarding** - The safeguarding of young people is a priority for our Trust. All colleagues must comply with the Trust's policies and procedures for safeguarding children and vulnerable young adults as well as comply with the relevant statutory guidance on safeguarding. This includes the Trust's policy on Data Protection.

**Equitable and Fair** – We are committed to equality and diversity and will make reasonable adjustments to the application of this policy and procedure in line with our equal opportunities commitment.

**Consistent and Objective** – All managers have a duty to ensure that they and all of the colleagues they are responsible for are aware of, and comply with, the Trust's policies and procedures. Managers are also responsible for making sure that colleagues know when they are not achieving or maintaining the expected standards of conduct or behaviour.

**Acceptable Behaviour and Conduct** - The employer expects all colleagues to meet high standards of behaviour and conduct, including the relevant code of conduct. Examples of the types of expected standards of behaviour are detailed at Appendix 2.

## **6. Minor Conduct Issues and an Informal Approach**

Your manager will adopt an informal approach in dealing with minor conduct issues and will guide or advise you in improving your conduct. Your manager will only consider dealing with minor disciplinary breaches through the formal stages of the procedure if your misconduct continues, is repeated or the misconduct is potentially more serious.

Cases of minor misconduct will be dealt with informally through a confidential conversation to identify:

- concerns about your conduct
- the action required to improve your conduct
- additional training, coaching and advice needed

The informal meeting will provide a reasonable opportunity for you to respond and to identify the factual accuracy of any concern that has been raised.

You and your manager must ensure that:

- you understand any future expectations of your conduct
- an appropriate action plan is developed
- a realistic timescale is agreed for monitoring your conduct

You will receive a letter confirming the detail of the informal discussions which will be kept on your personal file, however there will be no note made on your disciplinary record.

Where the behaviour causing concern may be related to an underlying relationship issue, it may be appropriate to consider an independent third party, such as a mediator, to help resolve the situation rather than disciplinary action.

In the event that the matter cannot be resolved informally or the matter is too serious, the formal disciplinary process will apply. Although the stages of the disciplinary process will normally be followed sequentially the formal process may commence at any stage taking account of the alleged misconduct.

## **7. Link with Other Policies and Procedures**

**Grievance Policy** – Where you submit a complaint during disciplinary proceedings, this will not normally stop the proceedings from progressing. Where you raise a grievance during disciplinary proceedings:

- The disciplinary proceedings may be temporarily suspended in order to deal with the grievance or;
- The grievance and disciplinary may be run concurrently where they are related.

Where you assert that disciplinary proceedings being undertaken are unlawfully discriminatory or are motivated by reasons other than misconduct, you can raise a grievance.

**Managing Attendance at Work Policy** - Where you are absent due to sickness whilst a disciplinary matter is pending, the managing attendance at work procedure will apply as normal.

As appropriate, we will arrange for you to see Occupational Health for them to assess your health generally and whether or not you are fit to participate in these procedures. Being absent from work due to sickness will not automatically stop the disciplinary procedure progressing. Where your absence from work is related to anxiety or stress about the disciplinary itself, it is in your best interests to bring the matter to a conclusion quickly.

## **8. Formal Disciplinary Process**

For allegations of misconduct with the potential to warrant formal disciplinary action, a prompt and thorough investigation will be carried out by an appropriate manager. A formal disciplinary investigation should be commenced within five working days of the Trust becoming aware of the matter and should be completed within 40 working days. This timeframe may be longer depending on the nature of the matter and extent of investigation required.

If allegations have been made against you, you will be informed as soon as possible as to the fact of an investigation, the nature of the allegations and when the investigation has been concluded.

Depending on the circumstances of the case, you may be invited to attend an investigatory meeting. If an investigatory meeting is held prior to a disciplinary hearing, you will be informed at the outset that the interview is an investigatory meeting.

The extent of investigation involved will vary depending on the allegations in question and the circumstances of the case. Investigations will be dealt with as confidentially as is reasonably practicable and sensitively. Limited investigation may be appropriate prior to a formal disciplinary hearing if this would be reasonable in the circumstances; for example, where an employee has admitted to the misconduct. This in no way prevents the employee from responding in full to the allegation made during the hearing.

If following investigation, it is reasonably believed that there are grounds for disciplinary action, you will be required to attend a Disciplinary Hearing. You will be provided with written details of the allegations against you to be presented to you at the hearing in writing at least five working days before the hearing.

A thorough investigation will always be completed prior to any formal disciplinary hearing in cases of potential gross misconduct.

You must provide copies of any relevant evidence you intend to refer to, at least two working days before the hearing.

At the hearing, the case against you will be explained and you will have the opportunity to fully respond to the allegations.

### **Right to be Accompanied**

You have the right to be accompanied by a trade union representative or work colleague at any meeting or hearing which forms part of the formal disciplinary procedure. Please note this does not include meetings to investigate data breaches, which are not part of the disciplinary procedure.

The representative/colleague may address the meeting/hearing, to put and sum up your case, respond on your behalf to any views expressed at the meeting and confer with you during the hearing. They may also request an adjournment and ask questions of anyone present. The companion does not, however, have the right to answer questions on your behalf, address the hearing if you do not wish it or prevent the hearing from progressing.

Under this procedure, you do not have the right to be accompanied by anyone else (such as a spouse, partner, other family member or legal representative).

However, it would not normally be reasonable for you to insist on being accompanied by someone whose presence would prejudice the hearing nor for you to ask to be accompanied by someone from a remote geographical location if someone suitable and willing was available on site.

Where appropriate, eligible colleagues, for example those with disabilities or language difficulties, may have the attendance of a supporter or interpreter.

### **Suspension**

Depending on the circumstances, you may be suspended from work on full pay during the investigation. Suspension on full pay is not a disciplinary penalty or a presumption of guilt. The Trust has the right to suspend with pay, if allowing you to remain at work would give reasonable grounds for concern that there is a potential risk to the business, to yourself or other employees or third parties or that evidence may be tampered with, destroyed or witnesses pressurised before the disciplinary hearing.

### **Action against Trade Union Representatives**

Disciplinary action against a TU representative can lead to a serious dispute if it is seen as an attack on their functions. Whilst normal disciplinary standards apply to a TU representative's conduct as a colleague, the relevant full-time official should be notified of any action (including suspension) that the employer proposes to take. All reasonable efforts must be taken to ensure that disciplinary action is not taken against a TU representative until the relevant full-time official has had an opportunity to be present at any stage of the formal procedure.

### **Criminal Offences**

Certain criminal offences may affect your suitability to continue in your role with the Trust or damage the Trust's reputation. If you are charged with a relevant criminal offence you must inform your manager as soon as possible. We will not treat

notification about criminal proceedings, or a conviction (including bind-over's 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 makes you unsuitable for your job or affects the Trust's reputation.

If you are subject to a criminal investigation, the Trust will determine to what extent it needs to conduct its own investigation before deciding whether to proceed to formal disciplinary action. The 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 to dismiss will be taken prior to giving you the opportunity to make representations.

If we have reasonable grounds to suspect that the potential misconduct involves child protection/safeguarding, fraud, systems abuse, theft, or any financial irregularity, we will notify the relevant agencies including the Local Authority Designated Officer for safeguarding (LADO), internal auditors and/or the police as soon as possible.

### **The Disciplinary Hearing**

Disciplinary hearings will be conducted by an appropriate manager/Director or by a panel of Directors with the appropriate level of authority under the Trust's decision making structure. You will be given ten working days' notice of a disciplinary hearing. You must make all reasonable efforts to attend a disciplinary hearing. If you or your representative is unable to attend a hearing you may propose a new date of no more than 5 working days from the date of the original hearing date.

If you do not attend the hearing without good reason, it may be re-arranged but if you do not attend the rearranged hearing, a decision may be made in your absence. You may submit a written statement to be taken into consideration or your representative may present information on your behalf.

Where you are persistently unable or unwilling to attend the hearing, the manager or panel may make a decision on the evidence available.

The hearing will be conducted as follows:

- The manager/panel will explain the allegations against you;
- The investigating manager or other senior manager will present the evidence in support of those allegations including calling witness(s) where relevant;
- You will have the opportunity to respond to the allegations, which will include the presentation of your own evidence if you wish;
- You may request that any relevant witness(s) attend the hearing except where you rely on character witnesses; in which case a witness statement should be provided;
- Witnesses whose evidence is not challenged will not be called.

The deciding manager or panel may be supported by a specialist adviser.

Minutes of formal meetings and the outcome will be given to you for your information and copies of notes, letters and action plans will be retained on your personal file.

## **9. Disciplinary Penalties**

### **Stage 1 – First Written Warning**

A first written warning may be issued following the disciplinary hearing in the following circumstances:

- for a first act of misconduct where there are no previous warnings and where any agreed adjustments and other support has been made or provided.

The warning will remain active for 6 months and it should be disregarded for disciplinary purposes after this period. It will be kept on your personal file in line with the retention period for that file.

### **Stage 2 – Final written warning**

A final written warning may be issued following the disciplinary hearing in the following circumstances:

- where there has been a further act of misconduct while an existing warning is in effect, or
- the seriousness of the misconduct is sufficient to warrant such a warning, even though no previous warning may have been issued.

The warning will remain active for 12 months and it should be disregarded for disciplinary purposes after this period. It will be kept on your personal file in line with the retention period for that file.

### **Stage 3 – Dismissal**

Dismissal may be actioned following the disciplinary hearing in the following circumstances:

- where, within the duration of the final written warning, the necessary improvement in behaviour has not been achieved and any agreed adjustment and other support has been made or provided. This would be with notice or payment in lieu of notice; or
- where there has been a further act of misconduct while an existing warning is in effect;
- where it is reasonably believed that you have committed an act of gross misconduct. Gross misconduct will usually result in summary dismissal without notice and without pay in lieu of notice. Examples of gross misconduct are detailed at Appendix 3.



In addition, the Trust reserves the right to dismiss you summarily for some other substantial reason, in circumstances which relate to the safeguarding of young people. This may relate to conduct prior to employment with the Trust where an historical claim has been made. In such circumstances, if following investigation, evidence of prior conduct is subsequently found to be incompatible with your role and responsibilities, the Trust may terminate your contract of employment with immediate effect. This will be without notice and without pay in lieu of notice.

The decision to dismiss can be made by a Panel of Directors.

The hearing may at their discretion, consider alternatives to dismissal. Examples of such alternatives include demotion/loss of seniority, reduction in pay, compulsory training. If such an alternative is applied, it may also be accompanied by a final written warning. Records will be kept on your personal file in line with the retention period for that file.

### **Outcome**

On conclusion of the matter and within 5 working days, the outcome of the investigation/hearing will always be confirmed to you in writing, including where no further action is necessary.

### **Warnings**

Where a warning is issued, this will be confirmed to you in writing within 5 working days of the hearing. The warning will state:

- the misconduct that led to the warning;
- the action or improvement required by you;
- the duration of the warning;
- the likely consequences of the action of improvement not being taken and/or any further misconduct.

You will also be advised of the right of appeal and the person to whom an appeal should be made.

On conclusion of a disciplinary matter and in accordance with statutory safeguarding guidance, the Trust will fulfil its legal duty to refer to the Disclosure and Barring Service (DBS) and/or National College of Teaching and Learning (NCTL) if applicable.

## **10. Appeals**

Where disciplinary action has been taken, if you are dissatisfied with that decision, you can appeal. Your appeal must be in writing and set out the grounds of your appeal in line with the list below and include all the information you wish to rely on at the appeal hearing. You must send your appeal to the CEO within 5 working days of the date you received the letter notifying you of the disciplinary decision. The action taken at the disciplinary hearing will remain in force pending the outcome of the appeal.

You must identify one or more of the following grounds for appeal:

- the finding that you were guilty of committing the alleged act (or acts) of misconduct where the evidence did not support this finding;
- the severity of the disciplinary sanction imposed taking into account the nature of the misconduct and the mitigating circumstances;
- the fact that you don't feel the correct procedure was followed;
- the fact that new evidence that was not considered in the disciplinary hearing has come to light that would change the outcome;
- the sanction is inconsistent with how others have been treated;
- there was unlawful discrimination in the handling of the disciplinary.

The appeal panel may be supported by a specialist adviser.

You will be invited to the Appeal Hearing in writing and you will be given at least 5 working days' notice of the appeal hearing. You have the right to be accompanied at the Appeal Hearing by your trade union representative or work colleague.

You must provide copies of any relevant evidence you intend to refer to, at least 2 working days before the hearing.

The outcome of the appeal may be to overturn or confirm the original decision or apply a different, but not more serious, sanction. You will be advised of the appeal outcome, which will be confirmed in writing within 5 working days of the appeal hearing. There is no further right of appeal.

You are not entitled to raise a further complaint under the employer's Grievance Policy (or any of the employer's complaints procedures) in relation to the same grounds of appeal.

## **11. Data Protection**

The Trust will comply with the provisions of the Data Protection Act 2018 and the General Data Protection Regulations 2018. Employee data will be processed by the Trust in accordance with the principles of that legislation, as necessary for the performance of the employee's contract of employment and/or the conduct of the Trust's business. The Trust will ensure that personal information about an employee, including information in personnel files, is securely retained. Disciplinary information will be retained within an employees file, until the destruction of that file, in line with the Record Retention Schedule.

Minutes of formal meetings will be given to you for your information and copies of notes, letters and other relevant documentation should be retained on file.

## Trust Decision Making Structure

The Trust has determined that the following Decision Making Structure will apply to any formal action taken in relation to staffing matters with effect from 01 May 2018.

### **Personnel & Staffing Decision Making Structure - Formal Action**

**Investigating Manager** - Line Manager or more Senior Manager appointed to investigate the matter. The Investigating Manager may be present at a disciplinary hearing to present the investigation findings or to respond to questions regarding the investigation. The investigating Manager has no decision making powers.

**Presenting Manager** - Senior Manager responsible for presenting the case to a formal disciplinary hearing. The Presenting Manager has no decision making powers.

**Deciding Manager** - an individual appointed to consider formal action up to and including Stage Two Final Written Warning. This may be a Headteacher or the CEO.

**Deciding Panel** - a committee of Directors to consider the formal action up to and including dismissal.

or

**Deciding Manager** - this may be the CEO, an individual Director or a committee of Directors to consider the formal action up to and including dismissal.

### **Appeal Hearing**

**Investigating Manager (Appeal)** – The Investigating Manager may be present at a disciplinary hearing to present the investigation findings or to respond to questions regarding the investigation. The Investigating Manager has no decision making powers.

**Presenting Manager (Appeal)** – The Presenting Manager will have been either the Deciding Manager or a member of the Deciding Committee at the hearing stage and provides information only relating to the original decision. The Presenting Manager has no appeal decision making powers.

**Appeal Panel** - appointed to hear appeals relating to disciplinary action up to and including dismissal. The appeal panel will be appointed from the Board of Directors and will determine the outcome of the appeal. A person appointed to the appeal panel must not have been involved in the investigation or in the disciplinary hearing.

**Specialist Adviser** - may attend the hearing or appeal to provide specialist skills or expertise to the deciding manager or panel. This may be an internal or external adviser. The Specialist Adviser has no decision making powers.

### **Authority to suspend**

The Chair of the Trust Board or the CEO may suspend any employee.

## **Appendix 2**

## **Examples of Expected Standards of Behaviour**

The following are examples of the behaviour expected by the Trust of all its colleagues, although the list is not exhaustive:

- You should attend work punctually and regularly, in line with operational requirements;
- You should carry out reasonable requests/instructions from your managers promptly and efficiently, and to the required standard;
- Time off must be approved in advance by the appropriate level of authority, usually your manager and be in line with your contract of employment;
- You must follow the procedures outlined in the Managing Attendance at Work policy when notifying the employer of your sickness absence;
- You must comply with all of the employer's policies and procedures, including but not limited to the Safeguarding Policy, Data Protection Policy, the relevant Code of Conduct, the E-Safety/ICT Acceptable Use Policy or the Health and Safety Policy;
- You must fully engage with and provide all known information to data breach investigations
- You must adhere to professional body and statutory guidelines, as appropriate, and act professionally at all times;
- In your own interests, and in the interests of the Trust as a whole, you should bring serious breaches of the employer's policies or procedures to the attention of management.

### Examples of Gross Misconduct

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

- Action that has caused, or is likely to cause a child to suffer significant harm;
- Failure to take action to protect a child whom you believe is suffering, or is likely to suffer, significant harm;
- Actual or threatened violence or bullying behaviour;
- Theft or unauthorised removal of property, fraud, falsification of the Trust's records or any other dishonesty;
- Deliberate or serious damage to the Trust's property or that of a colleague, customer, contractor or authorised visitor;
- Serious negligence which does or could result in loss, damage or injury;
- Deliberately accessing, copying or distributing pornographic, offensive, obscene or inappropriate material electronically or via paper media;
- Being under the influence of alcohol, drugs or other similar substances at work which may give reasonable grounds to suspect your ability to undertake your duties or being in possession of illegal or intoxicating drugs on site;
- Refusal to obey reasonable instructions or any other act of serious insubordination;
- Any action or behaviour which brings the employer into serious disrepute;
- Serious breach of health and safety rules;
- Unauthorised disclosure of confidential information;
- Acceptance of bribes or other secret payments or gifts;
- Harassment or any act of discrimination towards any one you come into contact with because of your work;
- Convictions relating to activities outside work but which have a significant and direct bearing on your employment and duties with the employer and its reputation;
- Misrepresenting at any time, including at your appointment with the employer, any previous positions you have held, your 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.
- Deliberate or serious breach of General Data Protection Regulations and the organisation's policies and procedures in relation to data.