

Disciplinary Policy

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office@tssmat.staffs.sch.uk or 01543 472245

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Guiding Principles

We are committed to developing policies and processes that reflect our Trust values and contribute to promoting a positive working environment. The principles that underpin this are:

- encouraging adult-to-adult conversations where everyone acts to address workplace concerns early through day-to-day line management conversations
- being supportive, proactive and solution focussed, addressing concerns quickly and fairly, tailored to individual needs
- recognising that everyone has a responsibility and role to play in creating the right conditions to do their job well
- focussing on wellbeing and building trust within the workplace
- developing policies that support diversity and inclusion and promote an inclusive work environment free from any form of discrimination, bullying, harassment, or victimisation
- holding ourselves and each other to account to always behave and act in the best interests of the school, Trust, and our communities.

Purpose

This policy outlines what you can expect to happen if there are concerns about your conduct either of a minor nature that is repeated or is more serious misconduct, where a formal process is required. The aim of this policy is to enable you to achieve a sustained improvement in your conduct.

If you raise a grievance whilst there is an ongoing disciplinary process, then there may be a decision to pause, or to run concurrently.

Scope of Policy

This policy applies to all employees, regardless of length of service but does not form part of your contract of employment or any other contract to provide services and can be amended from time to time and in consultation with the recognised trade unions.

This policy does not apply to agency workers, consultants, self-employed contractors, volunteers or interns.

This policy is used to deal with misconduct. It does not apply to cases involving genuine sickness absence, proposed redundancies or underperformance. In those cases, reference should be made to the appropriate policy or procedure.

This policy has been implemented following consultation with our recognised Trade Unions.

Decisions will be made in line with the school's local scheme of delegation or equivalent mechanism for making decisions at the appropriate level.

The question of Conduct or Capability?

It can be helpful to understand when a concern could be a conduct issue and when it might be capability.

Capability is when you are unable to attain expected standards of performance. This may be due to a lack of skill, ability or a need for specific learning or development. In those circumstances your manager will support and manage you through the Capability Policy for support and non-teaching staff and the Capability Teachers Procedure for Teachers.

Conduct relates to your behaviours at work not reaching the required standards deliberately or wilfully ignoring guidance or instruction. In those circumstances the Disciplinary Policy would apply.

Early considerations

There may be occasions where there are concerns about your conduct. This may not always require a formal process and sometimes can be resolved through your day-to-day line management conversations such as in a 1-2-1's or other informal conversations.

These discussions will be held in private and without undue delay whenever there is cause for concern. Notes of relevant discussions and actions will be captured and agreed between you and your manager as normal.

However, we also recognise that in some circumstances, where misconduct has been repeated or is more serious and a formal process may be necessary. Where this is the case, your manager will always seek advice from their school HR provider to ensure a fair and reasonable process is followed.

Formal Disciplinary Process

If you have a repeated misconduct issue, or the misconduct is too serious to be dealt with through day-to-day conversations then a formal process is likely to follow.

As part of that formal process, you can expect:

- the Deciding Manager (who may be your manager) to speak to you about the misconduct issue, to explain that an investigation is required and why they feel this is necessary
- the Deciding Manager to confirm the details of the allegations being investigated, to you, in writing
- the Deciding Manager to confirm who has been appointed to investigate (Investigating Officer), and how long the investigation is likely to take
- to be given the opportunity to state your case as part of the investigation including identification of any witnesses and providing any relevant documents for review. The purpose of an investigative interview is to establish the facts and no decision on disciplinary action will be taken until after a disciplinary hearing has been held. You should attend any investigative interview as required.

- to be accompanied at any investigatory meeting
- a formal disciplinary hearing to take place if evidence supports misconduct has occurred, with a right to be accompanied
- to be provided with any written copies of evidence, investigation report and witness statements where a formal disciplinary hearing is required
- in exceptional circumstances where a witness's identity is to be kept confidential, we will give you as much information as possible while maintaining confidentiality. Note: this is only by exception
- the ability to state your case at any disciplinary hearing
- a right of appeal to any action because of a disciplinary hearing
- a range of possible sanctions to be applied if the misconduct is proven against you

You will be advised in advance if timescales need to be extended. This may be the case where an investigation is complex. No formal disciplinary action will be taken against you until allegations have been fully explored and investigated.

If you have difficulty at any stage of this procedure either

- because of a disability or
- because English is not your first language

you should discuss the situation with your manager as soon as possible, so that suitable support can be explored.

Outcomes following a formal investigation

Once an investigation has concluded, the Deciding Manager will review the findings and decide on what should happen next.

The findings may indicate that:

- evidence indicates a disciplinary hearing is not required
- a disciplinary hearing is not required but other actions may be necessary such as a period of re-training, learning, development or mediation
- evidence indicates a formal disciplinary hearing is required

Colleague Proposed Approach

There may, sometimes, be misconduct issues that are straightforward, and where, you readily accept your conduct has fallen short of the standards expected by us. For example, this could be where there is a repeat of minor misconduct, that has previously been dealt with via day-to-day management conversations.

In those cases, a "Colleague Proposed Approach" may be suitable for you to consider. This provides an opportunity to deal with misconduct issues more swiftly and without the need for a protracted investigation. An Investigating Officer will be assigned to investigate the allegations in the same way as a normal investigation.

However, they will consider your acceptance of misconduct in determining the scope of the formal investigation.

For a “Colleague Proposed Approach” to be an option:

- there must be sufficient facts known about your case to determine that the issue would only lead to a first written warning, and
- the issue should not have the potential to be gross misconduct, nor
- a matter we consider as misconduct that is sufficiently serious to warrant a final written warning

Additionally, for a “Colleague Proposed Approach” to be considered, the following must apply:

- the misconduct is admitted and acknowledged by you
- you have taken responsibility for your actions in relation to the misconduct
- you do not have a current live written warning for previous misconduct

You can request a “Colleague Proposed Approach” at the start or during an investigation.

If you wish to request this approach, you must:

- admit to the misconduct issue
- take responsibility for your actions in relation to the misconduct
- not have a current live written warning for previous misconduct

You, or your Trade Union representative /companion, should put your request in writing to the Deciding Manager. The Deciding Manager will then assess the suitability for “Colleague Proposed Approach” in liaison with their HR provider.

If, at any stage of the process, it comes to light that the issue does in fact have the potential to be gross misconduct or misconduct sufficiently serious to warrant a final written warning, the Deciding Manager will cancel the Colleague Proposed Approach, follow the investigation and full formal disciplinary hearing process.

The focus of the formal disciplinary hearing under a “Colleague Proposed Approach” will be a brief discussion on the findings of the investigation before moving on to discuss the sanction to be applied, if any. It will be clear in advance that the outcome will be no more than a first written warning.

A “Colleague Proposed Approach” is not appropriate where there are claims of bullying, harassment, victimisation or discrimination.

Formal Disciplinary Hearings

Where the findings of a formal investigation produce evidence that misconduct has taken place, the Deciding Manager will inform you that a formal disciplinary hearing will be arranged.

You will receive a written invitation to attend a formal hearing with the Deciding Manager who will be supported by a representative of the HR provider, wherever possible. Where dismissal may be an outcome, your school may conduct the formal hearing using a panel from the Governing Body and a HR Provider will be present to advise.

Please note that the council will be made aware of any potential dismissals for any reason, including conduct, and reserves the right to observe and provide advice at any formal disciplinary hearing where dismissal may be an outcome.

You will be given a minimum of 10 calendar days' notice of the meeting taking place, unless you request to meet sooner. You have the right to be accompanied at the meeting.

If you or your companion are unable to attend a formal meeting, you have a right to suggest an alternative time and date so long as it is reasonable, and it is not more than 5 working days after the original date.

A record of the meeting will be made, either by the person conducting the meeting, a note taker or electronic recording (where the meeting is held remotely). Where electronic recordings are made, for the purposes of transcription, this will be with prior consent by all attendees and data protection obligations being met. A written record or transcription of the meeting will be shared with you.

You are expected to attend meetings which form a key part of processes in relation to your employment. Meetings will be rearranged where possible however not usually more than once.

If you are unable to, or fail to, attend a rearranged meeting, without good reason, the meeting may be held in your absence. Where you have indicated, in advance, that you are unable to attend you may be invited to submit written representation (to arrive at least 24 hours before the meeting).

Where a decision is made in your absence it will be based upon the information available at the time, including any written representations you have made.

Where it is not possible to hold a face-to-face meeting under this procedure, we may conduct the process remotely, for example using Google Meet. We will ensure that you and your companion have access to the necessary technology for participating. Your rights will not be affected, and we will ensure that the procedure remains fair and reasonable.

You will receive a hearing invitation along with a copy of the disciplinary investigation report and all appendices including witness statements. If having read through the disciplinary documentation you have further information you wish to submit prior to the hearing you must share with the Deciding Manager no later than 3 working days

before the disciplinary hearing. This will include any additional witness information or character witness statements.

In almost all cases, we would expect you to have shared details of witnesses through the investigation process. We will not routinely call for witnesses to physically attend disciplinary hearings unless you have a specific fundamental challenge to their statement or an exceptional reason for doing so. You should discuss this with the Deciding Manager in advance of the hearing if you have a specific reason for asking a witness to attend a hearing.

The hearing will follow the steps below:

- the Deciding Manager will explain the allegations against you and evidence that has been submitted to support the allegations
- you will have opportunity to respond to the allegations, highlighting any key evidence you have as mitigation
- the Deciding Manager (and HR representative if attending will be able to ask any questions for clarification
- you will have opportunity to summarise your case at the end of the meeting, highlighting relevant points you wish the Deciding Manager to consider
- the Deciding Manager will adjourn the meeting to consider facts of the case and establish if they are able to make a decision
- the meeting will be reconvened after the adjournment and the Deciding Manager will advise you of the outcome verbally if they are able to OR advise you when they will be able to make a decision
- outcomes will be confirmed to you in writing at the earliest opportunity and within 5 working days of the disciplinary hearing
- where there is any delay to making the decision the Deciding Manager will contact you, explain the reason for delay and when a decision can be made. This may be because they want to gather any further information or consider matters discussed at the meeting

Potential outcomes of your disciplinary hearing are:

- No formal action – but may include recommendations for learning, development, coaching or similar support
- First written warning - that remains live for 6 months that may also indicate additional actions such as learning and development
- Final written warning that remains live for 12 months that may also indicate additional actions such as learning and development. It will usually be appropriate for:
 - misconduct where there is already an active written warning on your record; or
 - misconduct that we consider sufficiently serious to warrant a final written warning even though there are no other active warnings on your record.

- Dismissal with notice pay this might apply where there has been repeated misconduct for which you have previously received a warning but that does not equate to gross misconduct.
- Summary dismissal without notice pay – this will apply where the misconduct is so serious it is deemed to be “gross misconduct” and you are not entitled to notice pay.
- Action short of dismissal – this is not a stand-alone outcome, i.e it is usually accompanied with a final written warning but is an option available to the Deciding Manager as an alternative to you being dismissed. This might include redeployment to another role at a lower grade (without pay protection) or another team. This is will only apply in exceptional circumstances and if you do not agree to the alternative then dismissal would proceed.

You can be assured that you will not be dismissed for a first breach of discipline except in the case of gross misconduct.

Your outcome letter will:

- confirm the decision,
- detail of how and why the Deciding Manager has reached that decision
- explain how long the warning is live for
- set out the consequences of repeated misconduct
- include any recommendations or other actions, that have been determined as an outcome of the hearing

Outline your right of appeal

After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings. Exceptions to this may be where conduct is satisfactory throughout the period of the warning, only to lapse very soon thereafter. Where a pattern emerges and/or there is evidence of abuse, your disciplinary record may be borne in mind in deciding how long any warning should last. The purpose of this will be to help you achieve a sustained improvement in your behaviour or conduct. Each case will be considered on its own merits.

In cases where dismissal is an outcome, an authorised officer of the council will write to you within 7 days of the decision being communicated to them by the school.

If you feel dissatisfied with the outcome you have a right of appeal under the Appeal procedure.

Examples of Gross Misconduct

Gross misconduct is generally misconduct serious enough to justify summary dismissal (without notice). Examples of gross misconduct might include:

- any form of actual or threatened violence
- acts of bullying, harassment, victimisation, or discrimination

- deliberate and serious damage to the school's property
- breaches of the school's safeguarding procedures
- gross carelessness or negligence in performing duties/provision of services
- theft or unauthorised removal of the schools property
- fraud, falsification of records, deception, or any other acts of dishonesty
- causing loss, damage, or injury through serious negligence
- accessing, copying, or distributing offensive, obscene, or inappropriate material
- incapability at work or under the influence of alcohol, drugs, or similar inappropriate substances whilst at work
- refusal to comply with reasonable instructions
- action or behaviour which brings the school into serious disrepute
- serious breaches of health and safety policies and procedures
- unauthorised disclosure of confidential information
- serious breach of financial regulations
- a serious breach of confidence

Where allegations could constitute misconduct the school will make the council aware of any disciplinary process where a dismissal is a potential outcome. The council will be advised of and retain oversight of any cases of potential professional misconduct/gross misconduct.

Wellbeing and Support

Supporting wellbeing is an integral and essential part of our values. We recognise that disciplinary and investigation processes can be stressful for everyone involved.

We all respond to stressful situations in different ways. Sometimes a process may cause distress and impact on both physical and mental health. We have access to a number of services which may support you, please talk to your manager or the Business Manager about what is available.

Sickness Absence

If you have sickness absence at the start of or during a formal process under this disciplinary policy, then you can expect an investigation to continue especially where your absence is connected to the misconduct issue being investigated. It can often have a greater impact to delay or protract processes particularly where sickness absence is directly linked.

You can also expect a formal disciplinary hearing to proceed during a period of sickness absence. In either situation, we will consider the nature of your sickness absence and whether it is directly related to the conduct issue. We will usually expect you to agree to a referral to Occupational Health so that we can ensure we have advice on any adjustments or support that may be required to enable you participate in either the investigation or disciplinary hearing.

Suspension

There may be circumstances where consideration of your suspension from work will be necessary. Any suspension will be with full pay and will only occur where there is a very serious allegation of misconduct (gross misconduct), where there is no alternative to your suspension and/or any of the following apply:

- there are reasonable grounds to believe you may seek to tamper with or destroy evidence
- you may influence witnesses to sway the investigation inappropriately
- working relationships have severely broken down to the point there is a risk to other employees, property, pupils, or service users were you to remain in the workplace.
- where you are the subject of criminal proceedings which might affect your ability to do your job

We recognise that suspension can leave you feeling prejudged, demotivated and devalued. We would stress that a suspension is not an assumption of guilt, is not a disciplinary sanction and does not imply that any decision has already been made about the allegations. It will only be applied after very careful consideration.

You can expect your manager to meet with you to explain the reasons for your suspension and to explore what support you might require during this period. This will subsequently be confirmed in writing to you.

Your suspension period will be for no longer than is necessary to investigate any allegations of misconduct against you, or for so long as is reasonable while any disciplinary procedure against you is outstanding. It will be reviewed by the Deciding Manager on a regular basis to assess if there are any circumstances, not previously known, that affect the decision to suspend. You can expect to be updated following regular suspension reviews and on the status of the investigation by a mutually agreed person who will act as your key contact point.

Whilst suspended you should not visit school premises or contact any of our Governors, Trustee, suppliers, parents and pupils, contractors or staff, unless you have been authorised to do so by your manager or Deciding Manager. An exception to this is contact an employee requires with their companion who supports them as part of this process.

Fraud and other financial misconduct

Where there are allegations of fraud or other financial misconduct, the school will inform their Auditors who may undertake an audit investigation which will form part of the disciplinary investigation.

Police Investigations, Criminal Charges or Convictions

If you are charged with or convicted of a criminal offence this is not solely a reason for disciplinary action. It is essential however, that you inform your manager of any potential conviction or police involvement as failure to do so could in itself be

considered a conduct matter. We will consider what effect the charge or conviction has on your suitability to continue to do your job and if this in any way affects your relationship with us as your employer, work colleagues or the people we serve in the community. If it is considered that a disciplinary process is required, it will follow the same process as outlined in this policy.

You should be aware that if you are charged with or convicted of a criminal offence and refuse or are not able to engage with the investigation and/or disciplinary procedure you will be advised that our internal disciplinary procedure will not normally pause and you should be aware we will proceed based on the information we currently have, which could result in your dismissal.

Where an issue of misconduct is so serious that it requires prompt attention, we will not wait for an outcome of a criminal prosecution or conclusion of a Police investigation before taking fair and reasonable action.

Notification to the Local Authority Designated Officer may also be required for allegations relating to children.

Where there is little to no likelihood of your return to your role because of a criminal conviction or charge then your manager will seek appropriate advice from their HR Provider.

Statutory duty to refer conduct matters

There is a legal requirement for a school to make a referral to the Disclosure and Barring Service if it is felt that you pose a risk to a child or a vulnerable person or have engaged in conduct that has harmed (or is likely to harm) a child or vulnerable person.

In addition, a referral will be made to a relevant professional body (i.e., the Teaching Regulation Agency, Social Work England, or the Health and Care Professions Council) if there are concerns about any serious misconduct and fitness to carry out your duties and responsibilities or fitness to practise.

Action against Trade Union Representatives

Where disciplinary action is being considered and you are a Trade Union representative, the same procedure will apply, with the exception that a member of the HR provider will notify the full time Union body official before any action (including suspension) takes place. All reasonable efforts will be made to ensure that the full-time union body official has an opportunity (if requested by you) to be present at any stage of the formal Disciplinary Process.

Right to be Accompanied

In line with ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice, at any formal meeting you have the right to be accompanied by either

- a work colleague
- a trade union representative

- or an official employed by the trade union

You should confirm to the Deciding Manager who will accompany you in advance of any meeting. There are also times when we allow you to be accompanied at other meetings as part of this policy and it will be noted at the relevant sections where this is permitted.

At the meeting, your companion may make representations to us and ask questions but should not answer questions on your behalf. You may talk privately with them at any time during the meeting.

Acting as a companion is voluntary and your colleagues are under no obligation to do so. If they agree to do so they will be allowed reasonable time off from duties without loss of pay to act as a companion.

We may, at our discretion, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family) if this will help overcome a disability, or if you have difficulty understanding English.

Data Protection and Confidentiality

Our aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter. Breach of confidentiality may give rise to disciplinary action under this policy.

If you are invited to a formal meeting, you must not make any electronic recordings. An exception to this may be where it has been agreed by all parties as a reasonable adjustment related to a disability. Any breach of this provision may lead to disciplinary action, which could include dismissal.

Information about an investigation will be placed on your personnel file along with a record of the outcome given and any notes or other documents compiled during the investigation process. We process personal data collected during disciplinary investigations in accordance with our privacy notice and data protection policy.

Further Advice

If you need any further information about any aspect of this policy, please initially speak to your manager or Head Teacher. Alternatively, you can contact the Trust's HR Provider