



Spa Education Trust

Disciplinary Procedures

1. INTRODUCTION AND OBJECTIVES

If the Executive Headteacher is implementing a procedure on conduct, performance health or attendance they should follow the guidance within the procedure on which route to implement.

It is at the Executive Headteacher's and/or the Trustee Board's discretion to decide under which Schools' Procedure an issue should be properly dealt with. It is the expectation that good management practice will have been put into practice prior to implementation of a procedure and that advice is sought from the Trust's HR provider.

A high standard of discipline is essential for the efficient and orderly conduct of the Trust and for the safety and well being of all its staff. The Executive Headteacher is responsible for promoting and maintaining that standard.

For the purpose of this document, misconduct will be assessed by reference to the trust codes of conduct, contractual obligations and other relevant disciplinary rules laid down by the trust. Misconduct concerns may be about a single matter or a number of separate issues.

The procedure sets out both general principles, which will apply to the way in which the school disciplinary procedures will operate and in some instances, the detailed steps that will have to be followed.

The procedure is designed to help and encourage all employees to achieve and maintain appropriate standards of conduct. The main purpose of the disciplinary procedure is to encourage an employee, whose conduct is unsatisfactory, to improve. Disciplinary action may, at its extreme, lead to dismissal.

The Executive Headteacher or Board of Trustees has overall responsibility for promoting and maintaining standards of work conduct. Informal oral warnings and/or guidance interviews do not form part of the formal disciplinary procedure.

The following capability procedure has been established by the Board of Trustees in line with the powers given under the School Staffing Regulations 2003. In establishing these procedures, care has been taken that the procedure is consistent with the

Education Act and Regulations, employment legislation and codes of practice, as well as good personnel practice. The Headteacher will have the delegated responsibility to take disciplinary action up to initial dismissal decisions, following which there will be an opportunity to appeal to a panel of Trustees.

The Board of Trustees has a responsibility to apply the provisions of this procedure fairly and with full regard to the School Staffing Regulations 2003 and in accordance with the Trust's Code of Conduct.

The procedure should not be viewed primarily as a means of imposing sanctions or as necessarily setting out procedures leading to dismissal or a determination to cease working at the trust. Its aim is to ensure that employees of the trust covered by this procedure are treated fairly and consistently and that, particularly where an employee's job is at risk, proper and adequate procedures are observed before any decision is taken.

All proceedings under this procedure shall be held in private and shall be confidential.

The submission of a grievance or a complaint of discrimination, harassment or discrimination will not suspend the operation of the disciplinary procedure or prejudice the Executive Headteacher / Board of Trustees right to pursue disciplinary action against an employee. Concerns relating to disciplinary action taken against an employee cannot be dealt with under the trust's grievance procedure, but should be raised by the employee during and as part of the disciplinary process.

Scope of Procedure

This Disciplinary procedure applies to all staff who are permanent employees or directly employed fixed term staff within the trust, regardless of length of service, whether full-time, part-time, in all teaching and support posts, including Executive Headteachers, Headteachers and Deputies.

Teaching staff on daily or hourly supply have a right to request an exit interview to discuss the reasons for their termination of their contract and may be accompanied. This interview may take place after the termination and is outside the scope of this procedure. Agency Supply staff are not covered by this procedure.

The Executive Headteacher should use their discretion on whether to apply the procedure to long-term contractors on the trust's payroll.

Representation

At all stages of this procedure employees have the right to be represented by a recognised Trade Union official or a work colleague only (no other categories of representative will be allowed to attend. In addition to their representative, employees will also be allowed to have one other person (Trade Union Official or colleague only) attend any formal hearing solely for the purposes of taking notes. It is the responsibility of the employee to arrange for his/her representation including notifying the

representative of the hearing date in good time and sending copies of all relevant documentation. Where the employee's chosen Trade Union representative or work colleague is not available at the time proposed for the meeting/hearing, the employee may propose an alternative time. If the alternative time is reasonable (to management) and falls within 5 working days after the original date proposed, the meeting/hearing must be postponed to that time.

It is good practice for management to try and agree a mutually convenient date for the meeting/hearing with the employee and their representative or work colleague to ensure that meetings do not have to be delayed or postponed.

The Trust will consider any additional support where identified e.g. disability or interpretation.

Details of Southwark Trade Union representatives can be found on https://www.southwark.gov.uk/downloads/download/2138/guidance_and_advice_for_school_staff-miscellaneous

Discipline of Employee Representatives

Any Disciplinary action being contemplated in respect of staff representatives of recognised trade unions within this procedure should not be instigated without the prior involvement of the full-time official or nominee, of the appropriate Trade Union.

2. INVESTIGATION

2.1 When a disciplinary matter arises the following procedure will apply:

The appropriate person under the scheme of delegation will inform the employee of the nature of the allegations in writing with as much detail as possible and at the earliest opportunity. However, where a strategy discussion is needed, or police or children's social care services need to be involved, the employee should not be informed until those agencies have been consulted, and have agreed what information can be disclosed. The appropriate person under the scheme of delegation will investigate the matter.

Individuals who have been directly involved in the investigative process (including taking the decision whether or not to proceed with formal disciplinary action) may not sit on nor advise disciplinary or appeal panels, although they may present a case or appear as a witness.

The investigator will carry out a full and thorough investigation into the allegations, which will involve the gathering of evidence from the relevant parties this will normally include obtaining written statements from witnesses and/or notes of witness interviews; and conducting an investigation meeting with the employee.

The investigator will write to the employee and give the following information

- a) details of the allegations (as appropriate)
- b) copies of available information
- c) a copy of the disciplinary procedure
- d) time and date of investigation meeting
- e) right to representation at any meeting

The investigator will adjourn the meeting/investigation if other areas of concern require investigation.

The investigator's report will recommend whether the disciplinary matter has substance or dropped or more properly be dealt with by way of a guidance interview. If an investigator external to the trust has been commissioned then the recommendations of the report will be agreed by the Headteacher to whether the disciplinary matter has substance or dropped or more properly be dealt with by way of a guidance interview.

Where the decision is made to convene a disciplinary hearing, then the Investigator will inform the employee in writing.

Persons directly involved in the investigative process may present a case or appear as a witness, but may not give advice to or sit on the subsequent Disciplinary Panel.

2.2 Suspension

The Executive Headteacher or Chair of Trustees have the authority to suspend a member of staff from duty on full pay. This includes any other employment related activity including debarring the employee from entry into the trust or usual place of employment until the investigation is complete and a disciplinary hearing arranged, if appropriate.

Suspension will normally be on full pay. In very limited specific circumstances, however, this might not be appropriate, e.g. where the actions of an employee are delaying the carrying out of an investigation or the holding of a disciplinary hearing. Because the withholding or reduction of pay is a conduct or capability related action that is seen as additional to the suspension itself, the decision to suspend on nil pay can only be made by the Executive Headteacher following advice from their HR provider.

Suspension should not be automatic and only used in exceptional cases after careful thought has been given to the circumstances of the case, where there is no reasonable alternative.

Suspension should be considered after reference to the trusts HR provider (and LADO in cases of allegations of abuse) and where there is cause to suspect that (please note that this list is not exhaustive.)

- Possible risk of harm to a child or other children
- the allegation warrants investigation by the police (please note that suspension is not mandatory in this case and decisions to suspend should be taken on a case-by-case basis)
- is so serious that it might be grounds for dismissal
- or where the Secretary of State has made an interim prohibition order
- the employee's continued presence on site makes a fair investigation impossible, represents a serious risk to the safety of others or themselves or seriously undermines the reputation of the trust.

The Executive Headteacher or Chair of Trustees should also consider whether the result that would be achieved by suspension could be obtained by alternative arrangements to:

- duties
- working arrangements (e.g. providing for the individual to be accompanied at all times or moving the child(ren) to classes where they will not come into contact with the member of staff making it clear that this is not a punishment and after consulting with parents)
- working location (e.g. redeployment to alternative work so the individual does not have unsupervised access to children or so that the individual does not have direct contact with the child or children concerned or to another role in a different location or allowing to work from home)
- and or an initial 'cooling off' period for a period not exceeding three days (the cooling off period may be extended to allow an individual to be represented at a suspension meeting however this will not be unreasonable)

When considering the suspension of an employee, the Executive Headteacher or Chair of Trustees will arrange a meeting with the employee, unless this is very impractical this meeting should be timed to take account of the school day. The employee may bring a Trade union representative or work colleague to this meeting. The employee will be informed of the nature of the allegations. The employee may make representation in respect of the proposed suspension. The Executive Headteacher or Chair of Trustees will then verbally confirm the decision at the meeting and in writing within one working day. If the decision is to suspend the employee, then the letter will outline the reasons for the suspension and the nature of the allegations giving as much detail as appropriate for the reasons for the suspension.

Suspension during the course of an investigation is not a sanction in itself and does not imply guilt.

Regular contact with the employee must be maintained to ensure that they are kept informed of the progress of their case. Any reasons for delays should be recorded and notified to the employee and/or his/her representative.

Only the Board of Trustees can lift the suspension.

The powers given to the Board of Trustees in these paragraphs is without prejudice to the Education (School Government) Regulations 1999, which provides that the Chair or Vice-Chair of the Board of Trustees may exercise the functions of the Board in cases of urgency.

The letter should state that the investigatory and disciplinary process should be completed normally within 30 working days.

Where there is no case to answer or actions short of dismissal will be addressed at a hearing, the lifting of suspension is likely to be appropriate. This can only be authorised by the Chair of Trustees and should be confirmed in writing to the individual along with the arrangements and support for the return to work. Advice from the trusts HR provider should be sought before this action is taken.

3. FORMAL DISCIPLINARY PROCEDURE

- a) If the Executive Headteacher is satisfied that the complaint warrants a hearing, he/she will inform the employee and a Disciplinary hearing will be arranged. The employee will be informed in writing of the following:
- The date, time and place of the hearing with at least ten working days' notice from date of the letter.
 - The names of the panel members (but this may be subject to change)
 - The specific nature of the allegations.
 - The right to produce written statements and to bring witnesses.
 - The right to representation.
 - Names of any management witnesses with their witness statements.
 - Any supporting documents to be used as evidence by management.
 - Likely outcome if charges are proven i.e. warnings

The employee will be provided with copy of the trust's Disciplinary Procedure. If the employee wishes to call witnesses or provide relevant paperwork, this should be provided to the Clerk to the Trustees, as appropriate, at least three working days prior to the Hearing.

The Executive Headteacher will chair the Disciplinary panel. Trustees may be panel members. Where the Executive Headteacher has been directly involved in the procedures leading to disciplinary action, has instigated a proposal to dismiss or is a witness of particular conduct giving grounds for the disciplinary action in question (or the Executive Headteacher is being considered for disciplinary action) the initial decision can be delegated to one or more Trustees but where possible should be delegated to at least three Trustees.

4. AT THE HEARING

- a) An allegation which is considered by the Board of Trustees will be heard by a disciplinary panel as per the trust's scheme of delegation.

- b) The Executive Headteacher (except where she or he is the subject of the disciplinary) may attend the meeting to give advice, if a potential outcome is determination to cease working at for the trust.
- c) If the employee fails to attend the hearing, the case will be heard in their absence and the panel should make a decision based on the evidence available, unless the Disciplinary Panel receives acceptable reasons and therefore agrees to postpone the hearing to a later date.
- d) Where an employee is represented in his/her absence, it is recommended that the representative is asked to obtain a note signed by the employee authorising him/her to speak and act on his/her behalf.
- e) When neither the employee nor their representative attends and the proceedings continue, it is recommended that the process be adjourned after the management case is completed. The employee should then be sent a copy of the notes of the hearing thus far and any new documentary evidence presented, and offered the opportunity to submit a statement in defence or mitigation. This statement can be given in person at the reconvened hearing or in writing if the employee remains unable or unwilling to attend.
- f) It is for the Disciplinary panel to decide whether late evidence from either side is acceptable. The committee should seek the views of both sides when considering whether to accept late evidence, and consider the reasonableness and fairness of the decision. If late evidence is accepted in the form of written documentation, it would be usual to allow reading time by way of a brief adjournment.
- g) The Panel must ensure that the employee receives a fair and impartial hearing, is encouraged to be represented or accompanied, is allowed to present his/her case or have it presented and is allowed to bring witnesses and to question the management presenter and any management witnesses.

The disciplinary hearing will comprise two distinct parts

Part 1: The panel hears evidence and decides whether the charge is proven

Part 2: The panel considers mitigation and decides on the appropriate sanction if the charge is proven

Part 1

The Chair will open the proceedings by:

- stating the purpose of the hearing
 - introducing all present;
 - saying how the hearing will be conducted and any time constraints which may apply;
 - confirming that all have the same documentation;
 - confirming the number and names of witnesses attending on both sides;
 - asking for any points of clarification to be stated;
-

- reading the disciplinary allegations and asking whether the employee accepts the facts. If the allegation(s) is/are accepted then the Panel should proceed immediately to hear mitigation.

The Panel will then proceed to hear the disciplinary.

The normal order of proceedings would be

- Management representative to present their case
- Witnesses are called one at a time
- The witnesses are questioned by the management representative, the panel and finally the employee or his/her representative.
- The Employee presents his or her case in the same manner and order as the management presentation.
- The Panel shall ask each side to briefly summarise their respective cases at the conclusion of the cases, commencing with the management presenter. No new evidence should be submitted at this point.
- The Panel may adjourn the hearing in order to seek further information which includes requesting the re-attendance of the original witnesses and the attendance of additional witnesses.

Once the panel is satisfied that all the relevant evidence has been heard then the panel must reach a decision at the end of part 1 of the hearing and convey the decision to the employee and representative. All parties other than the assigned officer advising the Panel shall withdraw when the Panel considers its decision.

Part 2

Before deciding what disciplinary sanction to impose, the Panel must allow the employee or his/her representative to make a statement of mitigation. This may include the employee's disciplinary record, the employee's age, position, length of service and general performance as well as other factors such as domestic circumstances. The management presenter will also be allowed to comment on the mitigation offered by or on behalf of the employee.

Codes of conduct and action taken in similar cases in the past may be considered and representations as to whether the proposed action is reasonable in the circumstances.

Appendix 1 gives the normal structure of a disciplinary hearing

5. THE DISCIPLINARY ACTION

All parties other than the assigned officer advising the Panel shall withdraw when the Panel considers its decision.

After the Panel has considered all mitigating circumstances, the Panel shall propose any appropriate disciplinary action. The decision will usually be given orally to the employee in the presence of his/her representative. However, this may be varied by mutual agreement. The decision will also be confirmed in writing.

The possible actions arising from a disciplinary hearing are:

- no further action;
- guidance and/or training – appropriate for more minor breaches of conduct. The panel must set timescales and review periods;
- stage 1 written warning – appropriate for first instances of misconduct, for which guidance has already been given. Stage 1 warnings will remain live for six months;
- stage 2 written warning – appropriate for more serious cases of misconduct. Stage 2 warnings will remain live for nine months;
- final written warning – appropriate where the misconduct is considered to be insufficiently serious to justify dismissal but sufficiently serious to warrant only one warning, or where the misconduct is considered to be serious enough to justify dismissal but where a lesser sanction is appropriate in the particular circumstances (e.g. where there are exceptional mitigating circumstances). A final written warning may be the first and last warning, even if there is no previous record of disciplinary action against the employee and it must draw the employee's attention to the fact that his/her job is at risk if s/he does not improve. Final written warnings will remain live for nine months; and
- Decision to cease working at the trust by
 - Summary dismissal – appropriate in cases of gross misconduct where the breach is considered to be sufficiently serious to warrant dismissal for a first offence, this is dismissal without notice.
 - Dismissal with notice in other cases where there have been earlier warnings to which the employee has not made an adequate or appropriate response.

In addition, where appropriate, there are a number of supplementary sanctions that a panel may consider to accompany a written warning, a final written warning or dismissal, including demotion, transfer, and recovery of monies. Generally, the sanctions of demotion or transfer will be applied as an alternative to dismissal where the circumstances warrant this and where an alternative post has been identified and is available. However, transfers and demotion should only be considered with the agreement of the employee

The written notification from the Panel of their decision will include the following: -

- a). The precise nature of the misconduct proven.
- b). The period of time given for improvement, if appropriate and the standard of improvement expected.
- c). The disciplinary sanction being applied and, where appropriate, how long any sanctions will last.

- d). The basis of the panel's decision
- e). An indication of the likely consequences of further proven misconduct.
- f). Information about the employee's right of appeal, including how it should be made, by when and to whom.

6. APPEAL

6.1 The purpose

- a) The purpose of the Trustees Appeal is to review the decision made by the initial hearing, questioning the management presenter and/or considering any new evidence or mitigating circumstances.
- b) The Appeal panel may reduce, nullify or confirm the decision.
- c) Employees may appeal against the following disciplinary sanctions:-
 - Written warnings.
 - Supplementary sanctions.
 - Determinations to cease working at the school.
- d) Notice of Appeal must be received within ten working days of receipt of the decision letter. This time limit will be strictly observed.
- e) Arrangements for the Appeal will be made on receipt of the Appeal request. Wherever possible the Appeal should be heard within 20 working days of the lodging of the appeal and the employee should have at least 10 working days notice of the Appeal Hearing.

6.2 The Appeals Committee

- a) An Appeals Committee should be formed from the Board of Trustees to include no fewer members of the Board of Trustees than that of the Disciplinary Panel whose decision is subject to appeal.
- b) No member of the Disciplinary Panel concerned shall be a member of the Appeal Committee.
- c) All papers presented to the hearing, together with the decision of the Chair of the Disciplinary panel and any subsequent correspondence must be available to the Appeals committee. Any new evidence which the employee wishes to introduce, should be copied to all parties at least ten days in advance of the Appeals hearing.

6.3 At the Appeals Hearing:

- a) The appellant (or representative) presents the grounds of appeal and any mitigation, calling any witnesses as notified and at the discretion of the Committee.
The management presenter and then the Committee will ask any questions to the appellant.
- The management presenter responds to the appellant's presentation, calling any witnesses as notified and at the discretion of the Committee.
 - The appellant sums up the basis of the appeal and the management presenter sums up their response.
 - The Committee will consider the grounds for the appeal in private, paying particular attention to any new evidence that has been introduced by the employee and hear representations from both management and the employee or representative in order to determine whether the decision of the hearing was fair and reasonable in view of the evidence available.
 - The Committee recalls all parties and the chair orally confirms the decision.
- b) The decision of the Appeals panel is final and binding on all parties and once made must then be notified in writing to the employee.

7. RECORDS

The maintenance of accurate and contemporaneous records is essential, particularly in the event of referral to an Employment Tribunal. The panel dealing with the disciplinary should normally be accompanied by a note-taker. Notes are not necessarily verbatim, and there is no requirement for agreed minutes. It should be noted that consideration by an employment tribunal may be an extended time after the matter was considered internally.

Records should be held in a secure and confidential manner, often the issues raised by an employee are particularly sensitive and it is essential that information is kept in accordance with the Data Protection Act 1998.

Allegations of abuse against members of staff that are found to have been malicious should be removed from personnel records. For all other allegations it is important that a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, is kept on a person's confidential personnel file and a copy provided to the person concerned (Keeping children safe in education – April 2014).

Documentation which should normally be retained includes:

- all papers presented at the Disciplinary Panel hearing;
- notes of meetings (contemporaneous or otherwise)
- information collated by the panel or used to assist in making a decision;
- confirmation of the decision, or other supplementary correspondence;
- Clarity on how decisions were reached and disciplinary action determined.

8 DUTY TO REFER

The trust have a legal duty to refer to the Disclosure and Barring Service anyone who has harmed, or poses a risk of harm, to a child, or if there is a reason to believe the member of staff has committed one of a number of listed offences, and who has been removed from working (paid or unpaid) in regulated activity.

Where a teacher has been dismissed for serious misconduct or would have been dismissed had they not resigned, it must be considered whether to refer the case to the National College for Teaching and Leadership.

Advice should be sought from the HR provider.

9 DISCIPLINARY RULES

The ACAS Code of Practice on Disciplinary and Grievance Procedures suggests that employers should draw up rules with which employees must comply.

The Code of Practice acknowledges that it is impossible for an employer to prescribe a common and comprehensive set of disciplinary rules covering all aspects of employment within their organisation since much depends upon local working circumstances. Disciplinary rules are therefore by necessity likely to vary according to particular circumstances, such as the nature of work and working conditions.

The following are some examples of acts that are likely to be considered as breaches of the school's disciplinary rules that will be dealt with under the disciplinary procedure. It is stressed that this list is neither exclusive nor exhaustive:

- theft;
- fraud;
- falsification of records;
- corrupt or improper practice;
- sleeping on duty;
- physical assault and fighting;
- bullying, harassment and victimisation;
- abuse of authority;
- deliberate damage to School property;
- insubordination;
- disobedience to reasonable management instructions;
- sexual misconduct at work;

- abuse of clients;
- conduct at work likely to offend decency;
- misuse of school's property or name;
- improper use of the school's electronic mail or Internet facilities (e.g. storing or sending electronic material that uses unauthorised encryption, contains programme files, is obscene, indecent, sexist, racist, defamatory, abusive, in breach of copyright or is otherwise inappropriate);
- unauthorised removal of school property;
- bringing the school into disrepute;
- incapacity whilst at work brought on by alcohol or illegal drugs;
- negligence which causes or might cause unacceptable loss, damage or injury;
- serious infringement of health and safety regulations endangering others;
- making false and malicious accusations against colleagues;
- serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998 and the School's Whistleblowing policy);
- falsification of qualifications which are a stated requirement of employment or which result in financial gain;
- poor time-keeping;
- engaging in unauthorised employment during hours when contracted to work for the School; and
- unauthorised absence.

This policy is adapted from Southwark Council's Model School Disciplinary Procedures document.

Signed..... Date 13th December 2021
Chair of Trustees

Signed..... Date: 13th December 2021
Executive Headteacher

Appendix 1: The normal structure of a disciplinary hearing is as follows:

- introductions, procedural and questions for clarification;
- charge read out and employee asked whether charge is admitted or not;
- presentation of management case, including witnesses;
- employee or representative questions presenting manager (and any witnesses called by management);
- panel question presenting manager (and any witnesses called by management);
- presentation of employee case, including witnesses;
- management presenter questions employee (and any witnesses called by employee);
- panel question employee (and any witnesses called by employee);
- management presenter sums up;
- employee or representative sums up;
- final questions from panel to either party;
- adjournment to consider whether charge is proven;
- reconvene to announce panel's decision;
- employee or representative statement in mitigation (if required);
- management presenter comments on mitigation statement;
- adjournment to consider sanction;
- Reconvene to announce sanction and to advise that decisions will be confirmed in writing, including any appeal rights, normally within five working days.