



Disciplinary Procedure Policy

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Author Initials	SW
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(This policy supersedes all previous Disciplinary Procedure policies)

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Amendments

Policy Date	New Version Number	Summary of change	Comments
9/07/20	1.1	Minor changes	
1/10/21	1.2	11.4 , 12, 14.1 and 14.5 aligned to the ESW scheme of delegation	

Union Consultation

Date	Action (meeting, email etc)	Comments	Attendance
10/07/17	Meeting with Union Reps		UNISON, GMB, NASUWT, ATL, NUT

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1. Policy statement

- 1.1 The aims of this Disciplinary Policy and its associated Disciplinary Rules are to set out the standards of conduct expected of all staff and to provide a framework within which Headteachers/Managers/Governors can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary.
- 1.2 It is the Trust's policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond before taking any formal action.
- 1.3 The policy has been implemented following consultation with staff and recognised trade unions. It has been formally adopted by the Trust.

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- 1.4 This policy is contractual and forms part of any employee's contract of employment

2. Scope and purpose of policy

- 2.1 The policy applies to all employees regardless of length of service including those in their probationary period. It does not apply to agency workers or self-employed contractors.
- 2.2 Minor conduct issues can often be resolved informally between employees and their line manager. These discussions should be held in private and without undue delay whenever there is cause for concern. Where appropriate, a note of any such informal discussions may be placed on the employee's personnel file. In some cases, an informal verbal warning or instruction may be given, which will not form part of the disciplinary records. Formal steps will be taken under this policy if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).
- 2.3 Employees will not normally be dismissed for a first act of misconduct, unless the Trust decides that the conduct amounts to gross misconduct.
- 2.4 As recognisable figures in the local community the behaviour and conduct of staff in the Trust outside of work can impact on their employment. Therefore, conduct outside work may be treated as a disciplinary matter if it is considered that it is relevant to the employee's employment (see disciplinary rules).

3. Confidentiality

- 3.1 It is the aim of the Trust to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.
- 3.2 No electronic recordings are taken of any meetings or hearings conducted under this policy.
- 3.3 Employees are normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against them, unless there is good reason that a witness's identity should remain confidential.

4. Allegations

- 4.1 Allegations may be brought to the Trust's attention in a number of ways and through a variety of sources. Appendix 1 sets out the disciplinary rules. As with disclosures made by children and young people, adults need to be aware that in making an allegation it is not always possible to keep the matter confidential. The Headteacher/Chief Operating Officer/Chief Executive/Manager will need to decide upon the most appropriate course of action and may choose to proceed with an investigation even if the person making the allegation does not want them to.
- 4.2 Allegations which involve issues of child protection and/or abuse of children by staff should be referred immediately to the Designated Officer of the Local Authority. See Appendix 2 for further guidance on the management of this type of allegation. No further action under this policy will usually be taken until the Designated Officer of the Local Authority has been consulted.

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5. Investigations

5.1 Upon receiving any allegations against employees, it is likely that further information will be required to establish what the next course of action should be. The Headteacher/Chief Operating Officer/Chief Executive Officer/Manager should seek to establish the basic facts of the situation; this may involve looking at records, speaking to witnesses, reviewing CCTV etc.

5.2 Preliminary fact finding

A preliminary investigation meeting may be held with the employee to establish the basic facts of the circumstance and to enable the Headteacher/Chief Operating Officer/Chief Executive Officer/Manager to determine whether further investigation is required. Such a meeting can sometimes give a reasonable explanation in response to allegations which then enables the matter to be concluded. A preliminary meeting will not be required in all cases and it is for the Headteacher/Chief Operating Officer/Chief Executive Officer/Manager to decide if this is appropriate.

5.3 Investigating Officer

After a preliminary investigation where it is determined that there is a need for investigation, or if the concerns are serious enough to warrant a full investigation immediately, the Headteacher/Chief Operating Officer/Chief Executive Officer will usually appoint an Investigating Officer to carry out the investigation. This will be an appropriate person to the nature of the allegations and the role of the employee. In the case of allegations made against the Headteacher/Chief Operating Officer/Chief Executive Officer the Chair of Governors/Chief Executive Officer /Chair of the Board will be responsible for the management of the procedure and determining an appropriate investigating officer, either internally or externally.

5.4 Further investigation

The purpose of an investigation is to establish a fair and balanced view of the facts relating to any disciplinary allegations made against an employee, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required depends on the nature of the allegations. It may involve interviewing and taking statements from the employee and any witnesses, and/or reviewing relevant documents and other information.

5.5 Interviewing witnesses

It may be necessary to interview witnesses who may have information that is relevant to the allegations. A record of the meeting is made and the witness has the opportunity to review the record, make amendments for clarification purposes and sign and date the record. The Trust recognises that some employees may find this difficult or worrying, however all employees are expected to fully participate in any such investigation.

5.6 Interviewing the employee

Investigation meetings are solely for the purpose of fact-finding and no decision on disciplinary action is taken until after a disciplinary hearing has been held. Employees do not normally have the right to bring a companion to an investigation meeting. However, employees may bring a companion who may be a colleague or a trade union representative if they are available. If an employee's chosen companion is not available on the day proposed for the hearing, the employee can propose an alternative date within the following five days of the original date proposed.

5.7 A record of the meeting is made and the employee has the opportunity to review the record, make amendments for clarification purposes and sign and date the record.

5.8 Employees must co-operate fully and promptly in any investigation. This includes providing the

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names of any relevant witnesses, disclosing any relevant documents or information and attending investigative interviews if required. Each investigation is completed in as short a time frame as possible.

- 5.9 If an employee fails to attend a meeting or hearing under this policy through circumstances beyond their control, such as certified illness, an alternative time and date may be offered. Alternatively, they may submit a written statement or nominate a representative to attend on their behalf.

Where an employee is persistently unable or unwilling to attend the meeting/hearing it proceeds in their absence and a decision based on the evidence available is made.

A failure to not attend a pre-arranged meeting or hearing may also lead to action under this policy.

6. Criminal charges

- 6.1 Where conduct is the subject of a criminal investigation, arrest, charge or conviction the facts are investigated before deciding whether to take formal disciplinary action. Disciplinary action is not automatic. Employees inform their Headteacher /Chief Operating Officer /Chief Executive Officer immediately if they are involved in a criminal investigation, arrest, or are subject to a charge or conviction. Failure to notify may result in disciplinary action.
- 6.2 The Trust does not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where employees are unable or have been advised not to attend an investigation meeting or disciplinary hearing or say anything about a pending criminal matter, a decision may have to be made based on the available evidence.
- 6.3 A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if it is considered that it is relevant to the employee's employment.
- 6.4 Where a criminal investigation relates to allegations of abuse of children or young people the Trust co-operates and shares information about the employee with other relevant agencies as appropriate.

7. Suspension

- 7.1 In some circumstances it may be necessary to suspend the employee from work. The suspension is for no longer than is necessary to investigate the allegations and conclude the disciplinary process. The arrangements are confirmed to the employee in writing as soon as possible.
- 7.2 Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. Employees continue to receive normal salary and benefits during the period of suspension. Reasons for suspension could be:
- as this may facilitate a more objective investigation
 - the allegation(s), if found, is sufficiently serious that the outcome may be dismissal
 - the employee is the subject of investigation by the police and the alleged offence is considered relevant to the duties of the employee
 - it could be prejudicial to the Academy's interests if the employee remains at work
 - there may be a detrimental impact on colleagues

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- there is a need to prevent access to any records or systems
- there will be media interest / publicity that may negatively affect the Academy / children.

- 7.3 Alternatives to suspension, for example re-organisation of duties, work location, temporary redeployment to another role etc. are explored where relevant before a decision to suspend is made. The nature and severity of the allegations need to be considered as will the employee's role within the Trust.
- 7.4 Where allegations are made that involve the protection of children suspension is not automatic. A reasoned decision is made based on all available information.
- 7.5 The suspension is kept under review as the investigation progresses. As information is gathered it may become appropriate to lift the suspension during the course of the investigation or prior to any disciplinary hearing.
- 7.6 The decision to suspend an employee can be made by the Headteacher//Chief Executive Officer or Board.

8. Disciplinary hearing

- 8.1 Following any investigation, if there are grounds for disciplinary action, the employee is required to attend a disciplinary hearing. The employee is informed in writing of the allegations against them, the basis for those allegations, and what the likely range of consequences are if it is decided at the hearing that the allegations are founded. The following is also be included where appropriate:
- (a) a summary of relevant information gathered during the investigation;
 - (b) a copy of any relevant documents which will be used at the disciplinary hearing; and
 - (c) a copy of witness statements, except where a witness's identity is to be kept confidential, in which case as much information as possible will be provided while maintaining confidentiality.
- 8.2 At least five working days' written notice of the date, time and place of the disciplinary hearing are given to provide the employee with a reasonable amount of time to prepare their case based on the information that they have been provided with. The hearing is arranged as soon as is practicably possible.
- 8.3 The Headteacher/Chief Operating Officer/Chief Executive Officer is responsible for ensuring that all of the arrangements for the hearing are made and that the employee receives the paperwork and notice of the hearing.
- 8.4 An alternative date may be arranged where an employee requests that the hearing is postponed due to circumstances outside their control and not foreseeable at the time the details of the hearing were communicated to the employee. Where a postponement is agreed, this is confirmed in writing with the new date for the hearing (within 5 days of previously arranged date). Any further request for postponement may be refused unless there are exceptional circumstances.
- 8.5 Where an employee is persistently unable or unwilling to attend the meeting/hearing it proceeds in their absence and a decision based on the evidence available will be made.
- 8.6 A failure to not attend a pre-arranged meeting or hearing may also lead to action under this policy.

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9. Right to be accompanied

- 9.1 The employee may be accompanied by either a trade union representative or a work colleague. The employee must inform the Headteacher/Chief Operating Officer/Chief Executive Officer conducting the meetings who their chosen companion is, in good time before the hearing.
- 9.2 Should the employee choose to bring a companion to the hearing they are responsible for making these arrangements and for providing their companion with any paperwork that they require for the hearing.
- 9.3 A companion may make representations, ask questions, and sum up the employee's position, but is not be allowed to answer questions on the employee's behalf. The employee may confer privately with their companion at any time during a meeting.

10. Procedure at disciplinary hearings

- 10.1 If the employee and/or their companion cannot attend the hearing they inform the Headteacher/Chief Operating Officer/Chief Executive Officer immediately and consideration is given to arranging an alternative time. Employees must make every effort to attend the hearing and failure to attend without good reason may be treated as misconduct in itself. Failure to attend without good reason, or persistent inability to do so (for example for health reasons), may lead to a decision being taken based on the available evidence.
- 10.2 If the employee chooses not to attend the hearing they may choose to send a written statement for consideration at the hearing.
- 10.3 The hearing is chaired by Headteacher/Chief Operating Officer/Chief Executive Officer/Chair of Board. The Investigating Officer, Note taker and possibly a Human Resources Advisor are also present.
- 10.4 At the disciplinary hearing the Investigating Officer goes through the allegations against the employee and the evidence that has been gathered. The employee is able to respond and present any evidence of their own.
- 10.5 Relevant witnesses may be asked by the Investigating Officer or the employee to appear at the hearing. The employee must give sufficient advance notice if they wish to call witnesses to ensure that there is time to arrange their attendance. The employee is given the opportunity to respond to any information given by a witness.
- 10.6 The Chair may adjourn the disciplinary hearing if there is a need to carry out any further investigations such as re-interviewing witnesses in the light of any new points that have been raised at the hearing. The employee is given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 10.7 The employee is informed in writing of the decision and the reasons for it, usually within five working days of the disciplinary hearing. Where possible this information is also explained to the employee in person.

11. Disciplinary penalties

- 11.1 The Headteacher/Chief Operating Officer/Chief Executive Officer/panel may find that there is no case to answer and may refer the case back to an informal process. Alternatively, the Headteacher/Chief Operating Officer/Chief Executive Officer/panel may give the employee a disciplinary warning or dismiss them.

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- 11.2 First written warning. A first written warning may be authorised by Headteacher/Chief Operating Officer/Chief Executive Officer/panel/Chair. It is usually be appropriate for a first act of misconduct where there are no other active written warnings on the employee's disciplinary record.
- 11.3 Final written warning. A final written warning may be authorised by Headteacher/Chief Operating Officer/Chief Executive Officer/panel. It is usually appropriate for:
- (a) misconduct where there is already an active written warning on the employee's record; or
 - (b) misconduct that is considered sufficiently serious to warrant a final written warning even though there are no other active warnings on the record.
- 11.4 Dismissal. A decision to dismiss can be taken by Headteacher/Chief Operating Officer/Chief Executive in accordance with the ESW scheme of delegation. . It is usually only appropriate for:
- (a) any misconduct during the probationary period;
 - (b) further misconduct where there is an active final written warning on the record; or
 - (c) any gross misconduct regardless of whether there are active warnings on the record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal).

12 Dismissal. Some Other Substantial Reason (SOSR)

There may be occasions, following a fair procedure, where a dismissal for some other substantial reason (SOSR) is considered. In these circumstances the Headteacher/Chief Operating Officer/Chief Executive ensures that they act reasonably in dismissing the employee taking into account all of the circumstances.

There is no set definition of what a SOSR reason is, however common examples can include (but are not limited to):

- A breakdown in trust and confidence
- Conflict(s) of interest / Protection from competition
- Reputational risk
- Where there are concerns relating to the safeguarding of children or vulnerable adults, but where the Trust does not have grounds for a misconduct dismissal.

13. The effect of a warning

- 13.1 Written warnings sets out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period.
- 13.2 A first written warning usually remains active for 12 months and a final written warning usually remains active for 12 months. In exceptional cases verging on gross misconduct, a final written warning may state that it remains active indefinitely.
- 13.3 After the active period, the warning remains permanently on the employee's personnel file but is disregarded in deciding the outcome of future disciplinary proceedings. Any investigation and hearing paperwork where the allegations are considered to amount to child protection concerns are kept for the lifetime of the employee.

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14. Appeals against disciplinary action

- 14.1 The employee has the right to appeal against the disciplinary action taken against them. This must be in writing, stating the full grounds of appeal and sent to the Chief Executive Officer (or the clerk to board if the decision was made by the EO) within five working days of the date on which the employee was informed of the decision.
- 14.2 If the employee is appealing against dismissal, the date on which dismissal takes effect is not delayed pending the outcome of the appeal. However, if the appeal is successful they are reinstated with no loss of continuity or pay.
- 14.3 If any new matters are raised in the appeal hearing further investigation may need to be carried out. The Chair may adjourn the appeal hearing if there is a need to carry out any further investigations such as re-interviewing witnesses in the light of any new points that have been raised at the hearing. If any new information comes to light this is provided to the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee has a reasonable opportunity to consider this information before the hearing is reconvened.
- 14.4 The employee must be given written notice of the date, time and place of the appeal hearing. This is normally be no less than five working days. The employee may bring a companion to the appeal hearing.
- 14.5 Following the appeal hearing the Chief Executive Officer or the Board may:
- (a) confirm the original decision;
 - (b) revoke the original decision; or
 - (c) substitute a different penalty. Ordinarily a penalty will not be increased on appeal unless there is new information or evidence being available that requires further investigation
- 14.6 The employee is informed in writing of the decision and the reasons for it, usually within five working days of the appeal hearing. Where possible this information is also explained to the employee in person. There is no further right to appeal.

15. Referrals to external bodies

In cases where employees are dismissed or resign during a disciplinary process a referral to the Disclosure and Barring Service is made where the thresholds for referral are met.

16. Review of policy

- 16.1 This policy is reviewed every three years or upon change of relevant legislation. We monitor the application and outcomes of this policy to ensure it is working effectively.

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Appendix 1 - Disciplinary rules

1 Policy statement

- 1.1 The aim of the Disciplinary Rules and Disciplinary Policy is to set out the standards of conduct expected of all staff and to provide a framework within which the Headteacher/Chief Operating Officer/Chief Executive Officer and line managers can work with staff to maintain those standards and encourage improvement where necessary.
- 1.2 If any employee is in any doubt as to their responsibilities or the standards of conduct expected they should speak to their line manager or a member of Human Resources.

2 Rules of conduct

- 2.1 While working for Trust you should at all times maintain professional and responsible standards of conduct. In particular, you should:
 - (a) observe the terms and conditions of your contract, particularly with regard to:
 - (i) hours of work;
 - (ii) confidentiality.
 - (b) ensure that you understand and follow our Code of Conduct;
 - (c) observe all of the Trust's policies, procedures and regulations which are or notified to you from time to time by means of notice boards, e-mail, the intranet or otherwise;
 - (d) take reasonable care in respect of the health and safety of colleagues, pupils and third parties and comply with our Health and Safety Policy;
 - (e) comply with all reasonable instructions given by the Headteacher/Chief Operating Officer/Chief Executive Officer and managers; and
 - (f) act at all times in good faith and in the best interests of the Trust and those of our students and staff.
- 2.2 Failure to maintain satisfactory standards of conduct may result in action being taken under the Disciplinary Policy.

Misconduct

- 2.3 The following are examples of matters that will normally be regarded as misconduct and will be dealt with under the Disciplinary Policy:
 - a) Minor breaches of the Trust's policies including the Sickness Absence Policy, Electronic Information and Communications Systems Policy, and Health and Safety Policy;
 - b) Minor breaches of an employee's contract of employment;
 - c) Damage to, or unauthorised use of, the Trust's property;
 - d) Poor timekeeping or time wasting;
 - e) Unauthorised absence from work;
 - f) Refusal to follow reasonable instructions;

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- g) Misuse of the Trust's telephones, email or internet usage for personal reasons;
- h) Inappropriate or other offensive behaviour, including using obscene language, victimisation or harassment of other members of staff or pupils;
- i) Negligence in the performance of duties;
- j) Smoking in no-smoking areas, which applies to anything that can be smoked and includes, but is not limited to, cigarettes, electronic cigarettes, pipes (including water pipes such as shisha and hookah pipes), cigars and herbal cigarettes; or
- k) Poor attendance.
- l) Breach of confidentiality.

This list is intended as a guide and is not exhaustive.

Gross misconduct

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

2.5 The following are examples of matters that are normally regarded as gross misconduct:

- a) Theft, or unauthorised removal of property or the property of a colleague, contractor, pupil or member of the public;
- b) Fraud, forgery or other dishonesty, including fabrication of expense claims and time sheets, pupil's work, examinations or assessments;
- c) Actual or threatened violence, or behaviour which provokes violence;
- d) Deliberate damage to the buildings, fittings, property or equipment of the Trust, or the property of a colleague, contractor, pupil or member of the public;
- e) Inappropriate conduct with children or young people, including failing to maintain appropriate professional boundaries;
- f) Serious failure to follow the Trust's child protection procedures;
- g) Making a false declaration or failing to disclose information in relation to the disqualification from childcare requirements, or becoming disqualified from providing childcare;
- h) Serious misuse of the Trust's property or name;
- i) Deliberately accessing internet sites at work or at home, using School equipment, which contain pornographic, offensive or obscene material;
- j) Repeated or serious failure to obey instructions, or any other serious act of insubordination;
- k) Bringing the Trust into serious disrepute;
- l) Being under the influence of alcohol, illegal drugs or other substances during working hours or not being capable of fulfilling your duties because of the effects of alcohol or illegal drugs or other substances.
- m) Causing loss, damage or injury through serious negligence;

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- n) Serious or repeated breach of health and safety rules or serious misuse of safety equipment;
- o) Unauthorised use or disclosure of confidential information or failure to ensure that confidential information in your possession is kept secure;
- p) Acceptance of bribes or other secret payments;
- q) Conviction or caution for a criminal offence that in the opinion of the Trust may affect our reputation or our relationships with our staff, pupils, parents or the public, or otherwise affects your suitability to continue to work for us;
- r) Possession, use, supply or attempted supply of illegal drugs;
- s) Serious neglect of duties, or a serious or deliberate breach of your contract or operating procedures;
- t) Unauthorised use, processing or disclosure of personal data contrary to our Data Protection Policy;
- u) Harassment of, or discrimination against, employees, pupils, parents or members of the public, related to any of the protected characteristics
- v) Refusal to disclose any of the information required by your employment or any other information that may have a bearing on the performance of your duties;
- w) Giving false information as to qualifications or entitlement to work (including immigration status);
- x) Making a disclosure of false or misleading information under our Whistleblowing Policy maliciously, for personal gain, or otherwise in bad faith;
- y) Making untrue allegations in bad faith against a colleague;
- z) Victimising a colleague who has raised concerns, made a complaint or given evidence information under the Whistleblowing policy, Grievance Policy, Disciplinary Policy or otherwise;
 - aa) Serious misuse of our information technology systems (including misuse of developed or licensed software, use of unauthorised software and misuse of email and the internet) contrary to our ICT user policy;
 - bb) Undertaking unauthorised paid or unpaid employment during your working hours;
 - cc) Unauthorised entry into an area of the premises to which access is prohibited.

This list is intended as a guide and is not exhaustive.

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

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