



STAFF DISCIPLINARY POLICY AND PROCEDURE

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Reviewed by the SLT MAT Board

“The Trustees of the Southport Learning Trust are committed to safeguarding and promoting the welfare of children and young people at every opportunity and expect all staff and volunteers to share this commitment”

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1. Aim of this Policy and Procedure

This policy and procedure is designed to help and encourage all employees of the Trust to achieve and maintain appropriate and acceptable standards of conduct and to ensure a fair and consistent approach in managing conduct issues.

2. Scope

The procedure applies to all employees regardless of length of service excluding those in their probationary period where separate arrangements apply. It does not apply to supply staff, contractors, or volunteers.

As recognisable figures in the local community the behaviour and conduct of staff in the trust outside of work can impact on their employment particularly if it may make an individual unsuitable to work with children. This is known as transferable risk. Therefore, conduct outside of work may be treated as a disciplinary matter if it is considered that it is relevant to the employees' employment.

3. Exclusions

These procedures do not apply to matters more appropriately dealt with under separate procedures. Such matters include:

- Attendance and capability issues dealt with in accordance with the School's Attendance Management or Capability policies and procedures
- Issues of conduct arising during the probationary period

Additionally, where there is a potential disciplinary case against a Trade Union representative, no action under this procedure, other than precautionary suspension when gross misconduct is alleged, will be taken until the full time official of the Trade Union has been informed of the case.

4. Confidentiality and data protection

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 any information communicated to them in connection with an investigation or disciplinary matter as confidential during or after an investigation into an allegation.

A breach of confidentiality will be taken seriously and may warrant its own investigation.

Employees, and anyone accompanying them (including witnesses) must not make electronic recordings of any meetings or hearings conducted under this procedure.

Employees will 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.

During informal action, formal investigation and any subsequent stages of the procedure, the trust will collect, process and store personal data in accordance with our data protection policy. The data will be held securely and accessed by and disclosed to individuals only for the purpose of completing the disciplinary procedure. Records will be kept in accordance with our Workforce Privacy Notice, our Records Management policy and in line with the requirements of the *Data Protection Legislation* (being the UK General Data Protection Regulation and the Data Protection Act 2018) and any implementing laws, regulations and secondary legislations, as amended or updated from time to time. Any breach of data protection may constitute a disciplinary offence and be dealt with under this procedure.

5. Allegations

Allegations may be brought to the trust's attention in several ways and through a variety of sources. As with disclosures made by children and young people, adults need to be aware that in making an allegation or raising a concern it is not always possible to keep the matter confidential. The Head Teacher 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.

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. No further action under this procedure will usually take place until the Local Authority Designated Officer (LADO) has been consulted.

6. Investigations

Preliminary investigation

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 Head Teacher/ Manager should seek to establish the basic facts of the situation; this may involve looking at records, speaking to witnesses, reviewing CCTV etc.

A preliminary investigation meeting may be held with the employee to establish the basic facts of the circumstance and to enable the Head Teacher/ 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 Head Teacher/ Manager] to decide if this is appropriate.

Further investigation

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 Head Teacher/ Manager 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 Head Teacher the Chair of Governors/Chief Executive will be responsible for the management of the procedure and determining an appropriate investigating officer, either internally or externally.

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 will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and any witnesses, and/or reviewing relevant documents and other information.

It may be necessary to interview witnesses who may have information that is relevant to the allegations. A record of the meeting will be made, and the witness will have 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.

Investigation meetings are solely for the purpose of fact-finding and no decision on formal disciplinary action will be taken until after a disciplinary hearing has been held. A record of the meeting will be made, and the employee will have the opportunity to review the record, make amendments for clarification purposes and sign and date the record.

Employees must co-operate fully and promptly in any investigation. This will include providing the names of any relevant witnesses, disclosing any relevant documents or information, and attending investigative interviews if required. As each investigation will vary in length and complexity it will be completed in as short a time frame as possible.

7. Criminal charges

Where conduct is the subject of a criminal investigation, arrest, charge or conviction the facts will be investigated prior to deciding whether to take formal disciplinary action. Disciplinary action will not be automatic and will depend on the circumstances. Employees should inform their Manager immediately if they are involved in a criminal investigation, arrest, or are subject to a charge or conviction. Failure to notify their line manager may result in disciplinary action.

The trust will 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.

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 employees' employment.

Where a criminal investigation relates to allegations of abuse of children or young people the trust will co-operate and share information about the employee with other relevant agencies as appropriate following advice from the Local Authority Designated Officer (LADO).

8. Suspension

In some circumstances it may be necessary to suspend the employee from work, in particular where there are either reasonable grounds to suspect a member of staff, child or other children at the trust are at risk of harm or the case is so serious that it might be grounds for dismissal. The suspension will be for no longer than necessary to investigate the allegations and conclude the disciplinary process. The arrangements and the reasons for suspension will be confirmed to the employee in writing as soon as possible or within one working day if in relation to a safeguarding concern or allegation.

Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. Employees will continue to receive normal salary and benefits during the period

of suspension and will be provided with an appropriate named contact within the trust who will provide welfare support.

Alternatives to suspension, for example re-organisation of duties, work location and temporary redeployment to another role will be explored where relevant before a decision to suspend is made.

Where allegations are made that involve the protection of children, suspension will not be considered to be automatic. A reasoned decision will be made based on all available information in consultation with the Local Authority Designated Officer (LADO), including the views of the police and social care.

The suspension will be 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.

9. Principles

Wherever possible and appropriate, first occurrences of minor breaches of discipline / standards, should be dealt with informally, either through the normal course of management counselling and supervision.

No disciplinary action will be taken against an employee until the case has been sufficiently investigated and a disciplinary hearing has taken place. The employee will be advised in writing of the nature of the complaint against them and the arrangements for the hearing.

The employee will be given the opportunity to set out their case and respond to allegations before any decision is made.

Under this policy and procedure, no employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty can be dismissal without notice.

An employee will have the right to appeal against any disciplinary penalty imposed.

The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action; i.e. the disciplinary sanctions are not necessarily sequential.

Being suspended or interviewed as part of the investigatory process is not to be regarded as prejudging the matter. Nor is it to be considered a disciplinary measure.

The employee will have the right to be accompanied by a work colleague or trade union representative at all stages of the procedure with the exception of Step 1 of the formal procedure where immediate precautionary action is required and after having attempted to arrange representation, companions are unavailable.

HR support may be present at any of the stages of the procedure.

The intimidation or victimisation of persons prior to or following any complaint/allegation will not be tolerated and is a disciplinary offence in itself.

Any complaints/allegations found to be malicious or vexatious will be treated as a disciplinary matter.

The timescales within the procedures will be adhered to wherever possible and there is an obligation on all parties to allow for matters to be dealt with without delay. However, where there are good reasons, e.g. the need for further investigation or the lack of availability of witnesses or companions, each party may request that the other agrees to an extension of the permitted timescale.

The Trust will review this policy biannually to ensure the process is operating fairly, consistently and effectively.

10. Role of companions at Meetings and Hearings

An employee may bring a companion to any hearing or appeal where a formal warning may be issued, or dismissal may be a potential outcome. The companion may be either an official trade union representative or a work colleague. The employee must inform the person conducting the meetings who their chosen companion is, in good time before the meeting.

Should the employee choose to bring a companion to the hearing they will be responsible for making these arrangements and for providing their companion with any paperwork that they require for the hearing.

Acting as a companion is voluntary and 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.

If the choice of companion is not available at the time a hearing or appeal is scheduled, the employee may propose an alternative time for the hearing or appeal to take place and so long as the alternative time is reasonable and within five working days after the original scheduled date, we will postpone. If the employee's chosen companion will not be available for more than five working days afterwards, we may ask the employee to choose someone else.

A companion may make representations, ask questions, and sum up the employee's position, but will 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.

11. Procedure at disciplinary hearings

The hearing will be chaired by the Head Teacher/Principal or a panel of Governors/the Board. The Investigating Officer will also normally attend to present the investigation. A member of the Human Resources department may also be present.

At the disciplinary hearing the Investigating Officer will go through the allegations against the employee and the evidence that has been gathered. The employee (or their companion on their behalf) will be able to respond and present any evidence of their own. A format for a disciplinary hearing is attached at Appendix 1.

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 will be given the opportunity to respond to any information given by a witness. However, the employee will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, the Chair decides that a fair hearing could not be held otherwise.

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 will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The employee will be informed in writing of the decision and the reasons for it, usually within 5 working days of the disciplinary hearing. Where possible this information will also be explained to the employee in person.

12. Disciplinary penalties

The Head Teacher/ panel may find that there is no case to answer and may refer the case back to an informal process. Alternatively, the Head Teacher/ panel may give the employee a disciplinary warning or dismiss them.

The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. The Trust aims to treat all employees fairly and consistently, and a penalty imposed on another employee for

similar misconduct will usually be considered but should not be treated as a precedent. Each case will be assessed on its own merits.

A disciplinary warning, dismissal or alternatives to dismissal may be authorised by the Headteacher, or a panel of Governors/the Board.

First written warning

A first written warning will usually be appropriate for a first act of misconduct where there are no other active written warnings on the employee's disciplinary record.

A first written warning will usually remain active for six months.

Final written warning

A final written warning will usually be appropriate for:

misconduct where there is already an active written warning on the employee's record; or

misconduct that is considered sufficiently serious to warrant a final written warning even though there are no other active warnings on the record.

A final written warning will usually remain active for 12 months however, in very serious matters a final written warning may be given a period longer than 12 months but no more than 24 months.

The duration and effect of a warning

Written warnings will set 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.

Warnings may be live for a longer period than specified above depending on the seriousness of the misconduct and the wider circumstances of the case. The conduct will be reviewed at the end of a warning's active period and if it has not improved sufficiently the active period may be extended.

After the active period, the warning will remain permanently on the employee's personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

Dismissal

Dismissal will usually only be appropriate for:

- any misconduct during the probationary period.
- further misconduct where there is an active final written warning on the record; or
- 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).

Alternatives to dismissal

At our discretion, in some cases alternatives to dismissal may be considered, and will usually be accompanied by a final written warning. Examples include:

- Demotion.
- Transfer to another department or job.
- Loss of seniority; or
- Reduction in pay.

13. Appeals against disciplinary action

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 Head Teacher/ Manager within 5 working days of the date on which the employee was informed of the decision.

If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful, they will be reinstated with no loss of continuity or pay.

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 will be provided to the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing is reconvened.

The employee must be given written notice of the date, time and place of the appeal hearing. This will normally be no less than five working days. The employee may bring a companion to the appeal hearing.

Where possible, the appeal hearing will be conducted by a more senior manager/different panel of Governors not been previously involved in the case. The hearing may be a complete re-hearing or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light (in which case the format would be reversed so that the appellant would present their appeal first). This will be at the Head Teacher's/ Governors' discretion depending on the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.

Following the appeal hearing the Head Teacher/panel may:

- confirm the original decision.
- revoke the original decision; or
- 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

The employee will be informed in writing of the decision and the reasons for it, usually within 5 working days of the appeal hearing. Where possible this information will also be explained to the employee in person. There is no further right to appeal.

14. Misconduct

The following are examples of matters that will normally be regarded as misconduct and will be dealt with under the Disciplinary Procedure.

- Minor breaches of the Trust's policies
- Minor breaches of the employees' contract of employment
- Poor time keeping or time wasting
- Unauthorised absence from work
- Refusal to follow instructions

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

15. Gross Misconduct

Cases of Gross Misconduct may result in dismissal if proven and therefore will be heard by the Headteacher. In certain circumstances this may not be possible or appropriate, in which case the matter will be referred to a panel of Governors from the Local Governing Body.

Examples of gross misconduct may include:

- Theft, fraud, deliberate falsification of records or dishonesty
- Falsification of qualifications references
- Acts of violence, obscene or abusive behaviour or enticing others to do so (including fighting or assault on another person or animal)
- Acts of bullying, harassment or discrimination
- Deliberate or unauthorised use of or damage to School property or equipment
- Serious negligence which may cause unacceptable loss, damage or injury and willful negligence
- Unprofessional conduct and / or failure to disclose the same
- Serious non-compliance with financial or other statutory or School regulations, including rules on email and internet usage
- Serious breach of health and safety rules
- Serious acts of insubordination
- Unauthorised entry to computer or other records and / or disclosure of confidential information / matters to public sources
- Serious incapability at work brought on by alcohol or illegal / non-prescribed drugs.
- Possession of or sale of illegal substances
- Conviction of a criminal offence (committed inside or outside of work) that makes the employee unsuitable or unable to carry out their duties
- Serious breach of trust and confidence
- Bringing the Trust into serious disrepute

Employees against which an allegation of gross misconduct has been made will normally be suspended from work on full contractual pay while the alleged offence is investigated. If, on completion of the investigation and the full disciplinary procedure, the Headteacher is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

16. Warnings Issued to Employees Working with Children

Where the misconduct relates to work with children, warnings will be retained on a separate file. In the event of further misconduct at any time during the person's employment in a job role where they are required to work with children these warnings will be taken into account in disciplinary proceedings.

17. Referrals to external bodies

In cases where employees in regulated activity are dismissed, or removed due to safeguarding concerns or would have done had they not resigned during a disciplinary process, a referral should be made as soon as possible to the Disclosure and Barring Service (all staff) and Secretary of State (teachers only), where the thresholds for referral are met. This could also include when an individual is suspended and redeployed into work that is not regulated activity. A failure to do so when the criteria is met is a criminal offence.

Appendix 1 Format for disciplinary hearing

- 1 Welcome by chair of panel/hearing officer:
 - ask everyone present to introduce themselves and explain their role
 - explain purpose of hearing
- 2 Presentation of management case by investigating officer including evidence from management witnesses
- 3 Questions from employee/representative to investigating officer/witnesses
- 4 Questions from the hearing officer/panel to the investigating officer/witnesses
- 5 Presentation of employee's case by employee/representative including evidence from employee's witnesses
- 6 Questions to employee/witnesses from investigating officer
- 7 Questions to employee/witnesses from the hearing officer/panel
- 8 Summing up by investigating officer (no new evidence)
- 9 Summing up by employee/representative (no new evidence)
- 10 Hearing adjourned and all parties asked to leave whilst hearing officer/panel consider evidence, make a decision on level of sanction (if appropriate)
- 11 All parties return and employee advised of hearing officer/panel's decision, (sanction and right of appeal)
- 12 Notes from the meeting are used to confirm outcome in writing and sent to employee within the timescale set out in the policy