



Summit Learning Trust

Disciplinary Policy

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DISCIPLINARY PROCEDURE

1. Introduction

This policy applies to all Trust employees and aims to encourage a good working environment where employees conduct themselves appropriately to fulfill their contract of employment, and meet required standards of conduct, in line with the Trust's Code of Conduct Policy. The procedure is designed to enable individual cases to be resolved fairly, consistently and in a timely manner. The policy should be used to deal with alleged breaches of standards and professional codes of conduct and should not be seen simply as a punitive procedure. The procedure will be used where employee behaviour is unacceptable or an act of misconduct has occurred.

The Trust will ensure that any disciplinary matter is dealt with fairly in line with the ACAS Code of Practice on Disciplinary and Grievance Procedures (the ACAS Code)
<https://www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures>.

This includes carrying out any necessary investigations, to establish the facts of the case and informing employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.

2. Scope

This procedure applies to all employees employed within The Trust who have a permanent/fixed term/temporary contract of employment.

It will not apply to:

- issues related to alleged capability, except where it is considered to be a wilful refusal by the employee to carry out their duties;
- staff within their probation period

There may be some occasions where an employee's lack of capability could also be described as lack of competence. This Disciplinary Policy and the Capability Policy may be used concurrently whilst the Trust endeavours to ascertain if the lack of capability is misconduct or lack of competence.

In the event where an employee's conduct could relate to their health, this Disciplinary Policy may be used concurrently with the Trust's Sickness Absence Policy.

If an employee wishes to use the Trust's Grievance Policy in connection with actions taken under this Disciplinary Policy, this will not lead to an automatic delay or pause in the conduct of any matters under this Disciplinary Policy.

This procedure may need to be modified if there are issues relating to child protection allegations, and where the modification is needed in order to comply with the requirements of the Trust's Child Protection and Safeguarding Policies, for example, by allowing the Local Authority Designated Officer (LADO) to offer advice to Governors/Trustees at appropriate stages.

This policy does not form part of any member of staff's contract of employment and it may be amended at any time. We may also vary the procedure set out within it, including any time limits, as deemed necessary or appropriate in a particular case.

3. Guiding Principles

- Cases of minor misconduct can effectively be managed informally. However, if informal action does not bring about an improvement, or the misconduct is considered too serious to be classed as minor, formal action may be required as set out in this policy.
- The case against an employee will be heard by a different designated person/panel at each stage of the procedure, unless it is totally impractical.

- The Principal or the appropriate manager (for support staff, including members of the Executive Team) may only make a decision to issue up to and including a final written warning. The decision to dismiss an employee (other than a senior member of staff) can only be made by a Disciplinary Panel, comprising of three people; a member of the Local Governing Body, a Principal and an executive team member (as stated in the scheme of delegation), all of which should not have had any previous involvement in the particular case against the employee.
- The decision to dismiss a senior member of staff i.e. CEO, Principal and Executive members, can only be made by a Disciplinary Panel of three members of the Board of Trustees, normally comprising of the following:

Post	Panel	*Appeal heard by
CEO	Vice Chair of Board of Trustees, plus 2 Trustee members	Chair of Board of Trustees, plus 2 Trustee members
Principal	Vice Chair of Board of Trustees, plus 2 Trustee members	Chair of Board of Trustees, plus 2 Trustee members
Executive team member	CEO, plus 2 Trustee members	Vice Chair of Board of Trustees, plus 2 Trustee members

*no member of the appeal panel will have had any previous involvement in the case

- Managers should seek advice from the Trust HR Department at the earliest opportunity whenever an employee's conduct is giving cause for concern and which may result in disciplinary action.
- In serious cases, the Trust reserves the right to issue a Final Written Warning in circumstances where the employee has not received a First Written Warning. Employees will not ordinarily be dismissed for a first disciplinary offence, except in the case of gross misconduct.

4. Anonymous allegations

The Trust does not encourage the making of anonymous allegations as it can significantly and adversely impact on the school's means to investigate it as fully as normal. It will only consider these in exceptional circumstances. Any decision to consider anonymous allegations will be at the absolute discretion of the Trust. In exercising this discretion, the following factors will be considered:

- the seriousness of the issues raised;
- the credibility of the concern; and
- the likelihood of being able to confirm the allegation

5. Malicious allegations of unacceptable behaviour/conduct

If at any stage of this procedure, it is found that any allegation(s) made against an employee are malicious, consideration will be given as to whether it is appropriate to pursue disciplinary action in accordance with this Policy against the person(s) responsible for making the malicious allegation(s).

6. Suspension

The Chair of the Board (in the case of suspending the CEO or an Executive team member) the CEO (in the case of suspending a Principal) and the Principal or a member of the School/6th Form leadership Team for all other staff, (to whom the responsibility has been delegated to by the Principal) may suspend any employee with just cause with full pay. Suspension for alleged misconduct should only be instigated: -

- where the suspected offence may amount to gross misconduct; or
- In a situation when it is decided that a member of staff should be away from the Trust in the best interests of the investigation or the employee while a serious matter is being investigated.

Prior to any suspension, a member of the HR Team should be consulted before the action is taken. Alternatives to suspension, for example re-organisation of duties, working from home, alternative work location, temporary redeployment to another role (this list is not exhaustive), will be explored and where possible in consultation with the employee, before a decision to suspend is made.

The suspension, which will be confirmed in writing within 3 working days, will be for no longer than is necessary to investigate the allegations, and the employee will be provided with a point of contact. While suspended the employee should not visit any of the Trust's premises or contact any students or staff, unless the employee has been authorised to do so by a named contact.

Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations, nor is it an assumption of guilt or any wrongdoing on the employee's part. It is an act taken to enable the Trust to investigate potential acts of misconduct or issues which could lead to disciplinary action and/or where we have concerns about an employee's presence in work whilst such investigation is outstanding. The employee will continue to receive their full basic salary and benefits during the period of suspension.

The Chair of Board and the Trust CEO shall be informed of any incident that could result in such suspension, ensuring their capacity to participate in formal proceedings is not compromised.

7. Confidentiality

Disciplinary proceedings are confidential between the manager, member of staff and their TU representative or a workplace colleague for professional advice or support. Any information made available during proceedings must not be shared with anyone except those directly involved. Any breach of confidentiality may result in disciplinary action being taken against those involved.

Electronic recordings of any meetings or hearings conducted under this procedure are not permissible. To do so without consent will be deemed to be a disciplinary matter in itself.

8. Roles and responsibilities

Employees

All employees are responsible for familiarising themselves with standards of work and conduct including the Trust's Staff Code of Conduct, their terms and conditions of employment, the equality and diversity policies, the examples of disciplinary offences given in Appendix 1 of this document and any relevant standards or rules relating to: timekeeping; absence reporting; confidentiality; using e-mail, internet and telephones; data protection etc. whilst on Trust business.

They must ensure that their own conduct accords with established standards of work and conduct, including those mentioned above, in a way that promotes a positive working environment.

In accordance with their contract of employment they must co-operate with the disciplinary process.

Manager

Line Managers are responsible for ensuring that their team members are aware of, and understand what is expected of them. In the event that an employee's standards fall below expectations, Line Managers are responsible for initiating and taking action in accordance with the principles and steps set out in this policy.

Representative

An employee has the right to be represented and accompanied by a trade union representative, or a workplace colleague at investigatory interviews, formal disciplinary hearings and appeals (so long as a request by the employee to be accompanied is reasonable).

- The representative is there to support the employee and assist them in putting their points across. They can address the hearing, but they are not allowed to answer questions on the employee's behalf. If the representative is unavailable at the time the meeting is scheduled and will not be available for more than 5 working days afterwards, the employee may be required to seek alternative representation.
- If the choice of workplace representative is unsuitable, for example, if the representative has a conflict of interest, an employee may be asked to choose someone else.
- Employees do not have the right to be accompanied by relatives, friends or legal advisers unless they meet the above criteria.

9. Operation of the Procedure

Informal/Preliminary Action Stage

The Trust recognises that cases of minor misconduct are often best dealt with informally. Therefore, minor lapses from acceptable standards of conduct will usually be dealt with by the employee's manager having an informal discussion with the employee and giving informal oral warnings or written reprimands which will not be recorded on the individual's personal file. However, managers should keep a record of all informal/preliminary action being taken.

Any Informal Written Reprimands that were previously issued under the informal procedure may be used as evidence as part of the formal procedure to demonstrate that every effort was made to resolve the matter informally.

If the minor misconduct continues or is repeated, then the case should be dealt with under the formal stage of the procedure.

10. Investigation

The purpose of an investigation is for the Trust to establish a fair and balanced view of the facts relating to any disciplinary allegations 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 but will be expedited as soon as is practicable. This may involve reviewing any relevant documents and interviewing the employee and any witnesses.

An individual will be invited to attend an investigation meeting, giving 5 working days notice where possible. The invitation will set out an outline of the allegations to be discussed. Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held. The employee may be accompanied by a trade union representative or a work place colleague

Where the individual fails to attend an investigatory interview, they will be invited to a re-arranged interview and will be told that if they do not attend that interview (or submit a statement of their case by the date of that interview), the matter will proceed to a disciplinary hearing in line with this procedure. (Whether a matter proceeds to a disciplinary hearing depends on what has been established through the investigation as stated in the paragraphs below.)

The investigation should be conducted without unreasonable delay and ideally be completed within a reasonable time scale outlined to the employee (at the centre of the allegations) at the beginning of the process. Where completion of the investigation is not possible within a reasonable timescale, then HR will keep the employee updated on the reasons for the delay and confirm a revised timescale for conclusion of the investigation.

When the investigation is complete the Investigating Manager will prepare a report of their findings and depending on the allegations and investigation outcome, may be required to present the case at a disciplinary hearing, together with other relevant documentation and to call witnesses, where appropriate.

On the basis of the investigation, it will be decided if a disciplinary hearing is necessary. The Investigating Manager will make a recommendation which may include the following:

- Dismissing the allegation(s)
- Dealing with the matter informally or
- Proceeding to a disciplinary hearing

Senior and Executive staff – to ensure that an objective and impartial investigation is undertaken, an external Investigating Officer may be appointed for investigations directly relating to CEO, Principal and Executive team member. The Investigating Officer will make a recommendation in their report on whether a) they consider there is sufficient evidence for the case to be considered further at a disciplinary hearing, or b) there is no case to answer, as they do not consider there to be sufficient evidence for the case to be considered (further at a disciplinary hearing).

If the investigation relates to a Principal, the CEO will decide whether to accept the Investigating Officer's recommendation. If the investigation relates to the CEO, then it will be for the Chair of the Board of Trustees to make this decision.

11. Disciplinary Hearings

Disciplinary hearings for charges of misconduct (other than serious or gross misconduct) may be heard by the Principal or appropriate manager. Charges of serious or gross misconduct must be heard by a Disciplinary Panel (see guiding principles above).

An invitation to a formal disciplinary hearing will be sent to the employee in writing at least 5 working days in advance of the meeting, setting out:

- Date, time and place of the disciplinary hearing
- Nature of the allegations and a copy of the relevant policy
- Confirmation of the employee's right to be represented by a trade union representative or accompanied by a workplace colleague at the meeting
- A copy of the investigation report and associated documents to be used (if relevant)
- Names of appropriate witnesses to be called (students/children will not be called), if appropriate
- The employee's right to call witnesses and/or produce evidence in their defence
- Details of the person chairing the hearing and others to be in attendance

If requested by the employee, the hearing may be rescheduled to a more convenient time; however, this must be within 5 working days of the original meeting. If the employee cannot attend this rescheduled meeting, the process may continue in the employee's absence. A brief period of sickness absence may also delay the disciplinary hearing but if there are repeated short periods or

one long period of sickness absence then the process may continue in the employee's absence. In either of the above instances, the disciplinary/appeal chairperson may request written representation from the absent employee or their representative. The Trust reserves the right to impose disciplinary sanctions in the employee's absence where it is appropriate to do so.

Summary notes of the meeting will be taken and will be made available to all parties. It is not permissible at any point to electronically record these meetings in part or in whole.

12. Action against a Professional Association or Trade Union Representative

This procedure applies equally to employees who are representatives of professional associations or trade unions. However, before proposing to take action beyond the preliminary stage against an accredited representative of a professional association or trade union, the School/6th Form should discuss the case with the Trust Director of HR and the branch secretary or official employed by the professional association or trade union.

In cases of alleged gross misconduct by a representative of a professional association or trade union and where the branch secretary or full-time official cannot be contacted quickly, the representative may be suspended on full pay until such consultations have taken place.

13. Timescales and Definition of a Working Day

For the purposes of the operation of this Procedure, timescales are expressed in working days. In the case of teachers or other staff that work a term-time pattern, a working day should be regarded as a day that the Trust is open for students, but also for INSET days for staff when students are not required to be in attendance. For staff that work all year round, a working day should be regarded as a day that they would normally be required to attend for work. Where a disciplinary case arises just before a school holiday, arrangements to resolve the matter speedily should be discussed between the parties. An intervening school holiday should not of itself be a cause for an undue delay in resolving the case.

14. Disciplinary sanctions

- **Written Warning** – If the conduct and behaviour is of a more serious nature, or if a further occurrence arises within the duration of previous informal action, a written warning may be given to the employee. This will give details of the concern, the improvement required and the consequences of future misconduct. It shall warn that further action will be considered if there is no satisfactory improvement or any further breach of conduct occurs and will advise of the right of appeal.

A copy of this Written Warning will remain in the employee's file and remain valid for a period of 12 months from the date of the letter confirming the Written Warning. Copies of the Written Warning will be sent to the employee along with the notes of the hearing.

- **Final Written Warning** – If there is a failure to improve conduct or behaviour is still unsatisfactory within the duration of the Written Warning, or if the misconduct is sufficiently serious, a Final Written Warning may be issued to the employee. This will give details of the concerns, will warn that dismissal may result if there is no satisfactory improvement or a further breach of conduct and will advise of the right of appeal.

A copy of this Final Written Warning will remain in the employee's file and remain valid for a period of 18 months from the date of the letter confirming the Final Written Warning. Copies of the Final Written Warning will be sent to the employee along with notes of the hearing.

- **Dismissal** – If the conduct or behaviour is still unsatisfactory and the employee still fails to reach acceptable standards of conduct or behaviour after the receipt of a Written Warning/and or Final Written Warning, dismissal with notice may apply. Dismissal without notice (i.e. summary dismissal) may apply in cases of gross misconduct regardless of any, or the absence of, Written Warnings.

Dismissals may only be undertaken by the agreed Disciplinary Panel.

DISMISSAL WITH NOTICE

This will usually only be appropriate in cases where an employee still has a live/active final written warning on file for a disciplinary offence and a further act of misconduct takes place (known as cumulative misconduct).

The relevant period of notice will be given if it is not a summary dismissal e.g. statutory or contractual, whichever is the greater. Depending on the circumstances, the employee may be paid in lieu of their notice period rather than remaining in work during the notice period.

SUMMARY DISMISSAL WITHOUT NOTICE

Employees dismissed on the grounds of gross misconduct will usually be summarily dismissed i.e. without notice or payment in lieu of notice.

15. Right of appeal

The employee has a right of appeal against a written warning issued to them, and the appeal must be made in writing to the Director of HR within 5 working days of the receipt of the written decision. The employee must state the full grounds for the appeal.

The appeal will be heard by an appeal panel comprising of three people; a Governor and two members of the Trust Leadership Team i.e. Principal/ Executive Director. The appeal chairperson will be advised by a member of the Trust HR Team. For senior staff, please see section 3 for Guiding Principles.

An appeal hearing against any sanction is not a re-hearing of the disciplinary case and as such, an appeal may only proceed on the following grounds:

- the proper procedure was not followed and this materially affected the decision;
- the decision reached was incorrect in that the conclusion reached was not supported by the evidence presented;
- the sanction awarded was too severe, taking into account the nature of the misconduct and the mitigating circumstances;
- where new evidence which is pertinent, goes to the heart of the case and was not reasonably available at the time, has become accessible.

Outcomes: An appeal hearing will result in one for the following outcomes: -

- The appeal is upheld and any sanction imposed by the original hearing officer is withdrawn;
- The appeal is upheld in part, and a reduced sanction is considered appropriate;
- The appeal is not upheld and the original sanction stands;

NB: The appeal panel cannot increase the original sanction.

16. Right of appeal for dismissal

An appeal against dismissal will be heard by an appeal panel comprising of a member of the Governing Body, and two members of the Trust's Leadership Team, e.g. Principal/Executive Director, who have no previous involvement in the case. For senior staff, please see section 3 for Guiding Principles. The panel will be advised by a member of the Trust HR Team.

Appeals must be made in writing to the Director of HR within 5 working days of the receipt of the written decision stating the full grounds of appeal. Please see above for the grounds for which an appeal may be heard.

17. Appendix 1: Disciplinary Offences

"Gross misconduct" is the term given to misconduct that is so serious it undermines the contract of employment. A single act of gross misconduct will warrant dismissal, even if no previous warnings have been given. There is no definitive list of examples that constitute misconduct or gross misconduct and the examples given below are not exhaustive:

- Dishonesty, theft or fraud;
- Knowingly or recklessly falsifying or causing falsification or forgery to Trust documentation, (i.e. sickness forms, time sheets, expense claims etc.);
- Serious insubordination;
- Physical assault, gross indecency and social offences inside or outside of work;
- Conduct giving rise to any Child Protection issue including, but not limited to, a change in your DBS status during the course of your employment;
- Failure to disclose your DBS status/submit to a DBS check where requested to do so by the Principal and/or the Trust;
- Accepting a gift which could be construed as a bribe (in breach of the Fraud Policy)
- Unlawfully restraining a student;
- Supplying your personal contact details to a student without express authorisation from the Principal;
- Interacting with a student online out of school hours other than through the Learning Environment;
- Making any sexual or romantic contact with any student whatever the age of the student;
- Improper relations with a student of the Trust (including use of Social Media);
- Covert recording of any meetings without the knowledge or consent of all persons present;
- Abuse of authority;
- Breach of the duty of care towards students;
- Failure to report a data breach;
- Violent, abusive or intimidating conduct (non-verbal, verbal or physical);
- Deliberate or malicious damage to Trust property;
- Sexual, racial harassment or any other form of discriminatory behaviour, including the expression either verbally, or in writing or via any electronic or social media means of discriminatory views relating to any protected characteristic.'
- Unauthorised use or disclosure of confidential information in relation to a student, colleague, or The Trust;
- Attending work under the influence (or in the possession) of alcohol or non-prescription drugs;
- Reckless or serious misuse of a Trust vehicle or property;
- Serious incidents of unacceptable language or behaviour towards, including rudeness, to parents, colleagues and others;

- Incidents relating to safeguarding or putting the Trust into potential disrepute will be treated as serious;
- Serious failure to enforce and follow school conduct and disciplinary rules;
- Inappropriate, unacceptable and disruptive behaviour (at work or at work events);
- Any action likely to bring the Trust into serious disrepute including risk of bad publicity;
- Sleeping whilst on duty;
- Breach of Health and Safety rules;
- Failure to prepare full health and safety documentation and risk assessments for school trips;
- Any action which puts the safety and/or wellbeing of students at risk or breaches any legal obligations of the Trust;
- Unreasonably refusing to allow a search to be carried out in accordance with the Trust's rules;
- Disclosing the contents of any live examination paper or assessment in advance to a student or parent or otherwise committing malpractice in the exam preparation or attempting to conceal malpractice;
- Conviction for any serious criminal offence whilst working for The Trust;
- Unauthorised use of the internet for personal reasons during office hours or downloading material from the internet without permission;
- Unauthorised downloading of software or data for any reason;
- Conduct which in the opinion of the Principal or Governing Body could bring the Trust into disrepute;
- Knowingly making false, misleading or inaccurate oral or written statements to governors, the Principal, parents, other employees or other members of the public; and
- Spreading malicious and/or vexatious rumours or any activity designed to undermine the reputation of the Trust.

Dependent on the nature of the misconduct, the Trust may be bound to report the misconduct of staff to any relevant external agency i.e. National Council for Teaching and Leadership (NCTL), Police, Health and Safety Executive, Disclosure and Barring Service, etc. or any other body from time to time in charge of the regulation of conduct of staff. There is no requirement, nor is it normal practice, for this to be done with your consent and/or knowledge.

CRIMINAL PROCEEDINGS

Employees should inform their managers immediately if they are arrested, involved in a criminal investigation, or are subject to a criminal charge or conviction. Failure to disclose any such matters may result in a disciplinary investigation and to disciplinary action being taken against them.

Where an employee's conduct is the subject of a criminal investigation, arrest, charge or conviction, the Trust will investigate in line with this Policy before deciding whether to take formal action against an employee. Disciplinary action will not be automatic and will depend upon the circumstances.

Where employees are unable or have been advised not to attend an investigation meeting or disciplinary hearing or to say anything about a pending criminal matter, a decision may have to be made by the Trust based on the available evidence. An employee who is convicted of a criminal charge and is in prison may have their contract of employment frustrated. Each case will be determined on its own facts.