



# Engage MAT

## Staff Discipline and Conduct Policy

Date of ratification: November 2017.....

Date of review: November 2018.....



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**1. Purpose and scope**

1.1 The *Employee discipline: model procedure for schools* supports the Engage Trust’s standards and rules (including the Guidelines on Conduct) and aims to ensure consistent and fair treatment for all. It is not there to deal with problems associated with unsatisfactory work performance arising from an employee’s lack of capability.

1.2 Any complaints from parents (or others associated with the school) concerning the conduct of a member of staff should be dealt with under this employee discipline procedure and not the school’s complaints procedure. The details of the investigation and any sanction given as an outcome will remain confidential.

1.3 Disciplinary issues relating to all employees must be handled in a fair and equitable manner. Each case must be looked at on its own merits and any relevant circumstances taken into account.

1.4 The Academy Head teacher (and/or directors/governors when appropriate) is responsible for operating this procedure and is able to issue disciplinary *warnings*. Legislation allows for *dismissal* decisions to be made by:-

- one or more governors/ directors

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- the Exec Head teacher
- the CEO

The Trust Board should, on at least an annual basis, discuss and agree where responsibility for dismissal of staff (other than the CEO, Exec Head and Head of Schools) will fall and their decision must be formally recorded in the minutes of the full board meeting.

- 1.5 Where the conduct of the Head of School is the focus of this procedure, all references in the text should be read Exec Head/CEO. Where the conduct of the CEO/Exec Head is the focus of this procedure, all references in the text should be read “Chair of Board and other nominated directors with advice and support from the HR Consultant. At all stages in the process, the Chair of Board should work with, and take advice from, the appointed HR representative. Where there is a case to answer a panel of directors shall be convened to consider the allegations and take disciplinary action, including dismissal, where appropriate.
- 1.6 The Exec Head, CEO and Directors are advised to consult the *Employee discipline: guidance for schools* document for more detailed support in how to consider alleged disciplinary offences. Where alleged misconduct appears to warrant action under the procedure, advice should be sought from HR Consultant.
- 1.7 The Trust Board has overall responsibility for specifying the standards of behaviour required, enforcing the rules and ensuring that any breaches are tackled promptly.
- 1.8 Employees who abuse this (or any other) procedure by making malicious or frivolous allegations may face disciplinary action.
- 1.9 All parties involved in a disciplinary matter should treat the information which is the subject of the disciplinary investigation in strict confidence.
- 1.10 Information should not be shared with anyone who is not directly involved in these procedures. However those involved can discuss these matters with their representatives or advisers and, in some cases, there will be a requirement for

information to be shared with other bodies (for example, where allegations of abuse are made or suitability to work with children in the future may be a concern).

## **2. Procedure**

2.1 An employee who is subject to this procedure has the right to be:

- accompanied by a trade union representative or work colleague at the investigation stage; and
- represented by a trade union representative or work colleague at a disciplinary/appeal hearing.

2.2 The employee is responsible for arranging to be accompanied or represented.

2.3 An employee can be offered transfer to alternative employment in the Trust (including demotion to a post with less responsibility on a lower grade) as an alternative to dismissal, either as a result of a disciplinary hearing or on appeal, if this is considered appropriate. This would not be an option in cases of summary dismissal for gross misconduct and is unlikely to be deemed appropriate where the employee's misconduct was linked to working with children.

2.4 If the employee concerned is a trade union steward or officer, the Academy Head should, with the agreement of the employee, inform the full-time trade union officer prior to commencement of this procedure. Advice on this should be taken from HR Consultant.

2.5 No employee will be dismissed for their first breach of discipline, unless it is a case of gross misconduct.

## **3. Cases involving child protection issues, vulnerable adults , financial irregularities or health and safety concerns may constitute gross misconduct**

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- 3.1 Any complaint involving allegations relating to child protection issues must, in accordance with Section 8.3 of the NSCB's policies and procedures manual, be discussed with the Local Authority Designated Officer (LADO) and then his/her advice must be considered before any investigation takes place under this procedure. There is no discretion over whether or not to discuss such allegations with the LADO. All cases must be discussed where a child is involved and/or may be at risk or where the allegation is such that if judged to have foundation may bring into question the employee's suitability to work with children in the future. The LADO will then determine whether a formal LADO referral needs to take place and will advise on the appropriate course of action in line with the statutory guidance on handling allegations against members of staff who work with children.
- 3.2 Where the allegations made raise questions about health and safety practice in the school, whether this is caused by an accident or incident, a "near miss" or is an apparent breach of health and safety requirements, there is a statutory requirement for the matter to be reported; the academy should contact the Health and Safety Executive direct where it is believed the threshold for referral has been met.

## 4. Suspension

- 4.1 The law delegates suspension to the Academy Head or CEO. In the case of employees other than the Academy Head, the Academy Head would normally take the decision to suspend. In the case of suspension of the CEO, a nominated director would take the decision in consultation with HR Consultant.
- 4.2 If there are clear indications that an employee has acted in a manner which may constitute gross misconduct, or if the employee's presence at work could hinder the investigation, suspension would be appropriate. The Exec Head or CEO should, where possible, consult the employee before the decision to suspend is taken.
- 4.3 When a decision to suspend is taken, it must be made clear that the suspension is neither a disciplinary penalty nor an assumption of guilt. The employee must be given the details of people or organisations they can contact for support whilst suspended (e.g. Norfolk Support Line, Benenden or Union representative) and an internal point of contact (not be involved in the disciplinary investigation in any way)

who will keep the employee informed of everyday developments in school in order to minimise any sense of isolation during the period of suspension and can be a conduit for the suspended employee's requests for information that fall outside the remit of the investigation (e.g. information relating to their normal terms and conditions of employment).

- 4.4 Gross misconduct is generally defined as misconduct serious enough to fundamentally undermine (ie. damage beyond repair) the employment contract between the employer and the employee and to make any future working relationship and trust impossible. .
- 4.5 If a suspended employee is certificated by his/her GP as being unfit for work, s/he will be paid in accordance with their sick pay entitlement for that period of certification. This means that if a period of certificated sick leave continues beyond the employee's entitlement to full pay, s/he will receive pay in line with their sick pay entitlement which may be at half pay or no pay rate.
- 4.6 At frequent intervals, the Academy Head and/or CEO should review whether an employee should remain suspended. Any suspension which extends beyond four working weeks must be reported to the Chair of Board with details of how the investigation is progressing and when it is likely to end. Where any suspension continues for three months, the employee must be notified of the reasons for the suspension continuing and when it is likely to come to an end.
- 4.7 The responsibility for lifting suspension rests with the Board although this can be delegated to the CEO.

## **5. Investigation**

- 5.1 Disciplinary action must not be taken before there has been an investigation into the circumstances.
- 5.2 Good practice suggests that the investigation should be undertaken by an appropriate individual other than the individual who will consider whether a sanction

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should be applied. Where allegations have been made against Head of Schools, Exec HT/CEO should ensure an investigation takes place and may carry this out themselves. Where allegations have been made against the Exec Head /CEO, the Chair of Board (or nominated director) is advised to seek support for the investigation through the HR Consultant.

- 5.3 The employee may be required (and this would normally be the case) to attend a formal investigatory interview. The employee must receive at least five working days' notice, in writing, of the requirement for him/her to attend. The letter should give him/her information about the allegations and his/her opportunity to be accompanied by a trade union representative or work colleague.
- 5.4 The investigation should be completed within four working weeks unless there are exceptional circumstances.
- 5.5 On completion of the investigation, the Academy Head/CEO (or nominated Director where allegations are against the Exec Head/CEO) should review all the information available and decide which of the following is appropriate:
  - no action;
  - informal advice and discussion;
  - consideration under the formal disciplinary procedure (see 6 below).

\*In some cases, specifically those where allegations are made by a pupil or relate to claimed abuse of a pupil, a "no action" decision is likely to be the outcome when the allegation was either substantiated but not serious enough to warrant disciplinary action, unsubstantiated or malicious. The child protection process overseen by the LADO will help in this determination and will ensure that a finding is made. The issue of whether an allegation is found to be unsubstantiated or even malicious is significant for the employee, particularly around what records are held on file and what is said in a reference.

## 6. Disciplinary hearing

- 6.1 If the Academy Head/ CEO (or nominated Director) concludes, following investigation, that there is a case to answer at a disciplinary hearing, the employee will be notified in writing that a hearing will take place. The employee should be given at least five working days' notice of the hearing. If the employee's union representative is unable to make the specified date, the employee can propose an alternative date within five days. Because of this provision (from the ACAS

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guidance) the approach may be taken to consult the union representative on their availability before setting a date.

The following information should also be included in the letter:

- who will make the decision regarding disciplinary action;
- a copy of the disciplinary procedure;
- the date and time of the hearing;
- details of the allegations;
- reference to any documents that may form part of the evidence supporting the complaint or allegation and, where possible, a copy of these;
- the names of any witnesses to be called;
- the fact that the employee will have the opportunity to state his/her case and question any witnesses;
- the right to invite a trade union representative or work colleague to represent them;
- any previous warnings that could be taken into account when deciding the level of any disciplinary action;
- the fact that, depending on its findings, the hearing could result in disciplinary action and (adding where appropriate) that this could include dismissal;
- a statement that the employee must take all reasonable steps to attend the meeting.

A second copy of the documentation above should be provided to the employee for them to pass to their trade union representative or work colleague. If requested by the employee, this second set of papers can be issued direct to the trade union representative or work colleague.

- 6.2 Where the alleged misconduct is not likely to require a sanction beyond a Final Written Warning, the case will be heard by the Academy Head (or CEO where the Exec Head's conduct is in question or nominated Director where the CEO's conduct is in question).
- 6.3 Where the alleged misconduct has the potential to result in dismissal, the case will be heard by a panel of governors unless the authority to dismiss has been delegated to the Exec Head, in which case the Exec Head will hear the case. The exception to this is where the Head of School's conduct is in question where authority is delegated to CEO.



6.4 The hearing should follow the sequence of steps detailed at '*Procedure at Disciplinary and Appeal Committee hearings*'.

6.6 Disciplinary action can be taken at any level from a recorded oral warning to dismissal, depending on the nature of the misconduct.

## **7. Result of hearing - disciplinary action**

If, following an investigation and disciplinary hearing, it is concluded that disciplinary action is required, the following options are available:

### **7.1 Recorded oral warning**

If the conduct concerned is unacceptable but not serious in nature, a recorded warning will normally be appropriate. (See paragraph 7.5 about written confirmation.)

### **7.2 Written warning**

If the offence is too serious for a recorded oral warning, or if there is further misconduct while a recorded oral warning remains in force, it may be determined to give the employee a written warning. (See paragraph 7.5 about written confirmation.)

### **7.3 Final written warning**

If the misconduct is too serious for a written warning but not serious enough to warrant dismissal, or if there is further misconduct while a previous written warning remains in force, it may be determined to give the employee a final written warning. (See paragraph 7.5 about written confirmation.)

#### 7.4 Written confirmation of warnings

The employee must be given written confirmation of any warning, within five working days together with an explanation of:

- the reason for the warning;
- whether it is a recorded, written or final warning;
- the employee's right of appeal (see paragraph 9);
- the fact that a note will be kept on their personal file indicating that a warning has been given, the reasons for it and any required improvements in conduct which have been specified;
- the fact that further misconduct may lead to further disciplinary action which could, where appropriate, include dismissal;
- the fact that the warning will be disregarded for further disciplinary purposes after the expiry of the time period.

#### 7.5 Dismissal with notice (including dismissal with offer of re-engagement)

If, while a final written warning is still in force, the employee's conduct is still unsatisfactory, as determined by a subsequent investigation and disciplinary hearing, it will be determined to dismiss with contractual notice. The dismissal recommendation will be confirmed in writing within five working days, explaining the reasons for the dismissal and the employee's right of appeal. (See paragraph 9). The employee will receive full pay during the notice period.

If appropriate and an opportunity exists, the employee may *be dismissed* on the above grounds and offered to re-employment in a different job in the Trust. The alternative post should be identified when the employee is told the outcome of the disciplinary hearing and this may require the proceedings to be adjourned. The alternative post may mean demotion to a lower grade. No pay protection will apply. A final written warning will form part of such a disciplinary decision. If the employee refuses the offer of transfer/demotion, his/her dismissal will take place.

#### 7.6 Summary dismissal

If, following an investigation and disciplinary hearing, there is satisfaction that an employee is guilty of gross misconduct, the determination can be made to dismiss the employee. This determination to dismiss will be confirmed in writing, within five

working days explaining the reasons for the dismissal and the employee's right of appeal.

## **8. Time limits for warnings**

8.1 Unless there are exceptional circumstances, disciplinary warnings will be disregarded for disciplinary purposes once the following periods of time have elapsed since the warning was given:

- recorded warnings - 6 months
- written warnings - 1 year
  - Final written warnings - normally 1 year. However, in some circumstances the decision maker can exercise discretion in determining the period of time. See paragraph 8.2 below

Depending upon the nature of the misconduct, a final written warning may be imposed that will remain in force for a period greater than 1 year. It is advised that the warning should have a time limit of a minimum of 1 year and a maximum of 2. In considering an appropriate timescale the nature of the misconduct will need to be taken into account. The timeframe should not be dependent on the severity of the misconduct because the level of sanction reflects this. The timeframe should be enough that it gives time to see a positive change in behaviour. For example, if the warning relates to an event that only happens once a year or for a limited time each year (e.g. exams, SAT's, non-curriculum days), the decision may be for a two year timeframe to allow two annual cycles to be completed to ensure conduct has been adjusted. In other cases where it relates to regular events that happen every day (e.g. interaction with children or colleagues) a one year period may well be enough to see that conduct has been adjusted. In any event the employee must be told at the outset and in writing how long the warning will remain in force and the reason for the longer time period. There is no need for an employee to apply to request that the sanction is expired as it will automatically expire at the end of the time limit given, unless an extension is required. However, the record will remain on the employee's file.

8.2 Depending upon the nature of the misconduct, a final written warning may be imposed that will remain in force for a period of greater than 1 year. In this event the employee must be told at the outset and in writing how long the warning will remain in force and the reason for the longer time period.

- 8.3 In exceptional circumstances (e.g. abuse against children), the written warning may be extended for as long as the employee concerned is employed in his/her current job or a similar job. If an employee considers that the extended time period is unreasonable, he or she may appeal to the Trust Administrator who will convene an Appeal Hearing.
- 8.5 Where disciplinary action relates to abuse against children, breaches of financial regulations or issues which relate to racial, sexual or disability discrimination, the relevant documentation should be retained on the employee's personal file until the employee reaches 65 years or 10 years whichever is the longer, but will not form part of any subsequent disciplinary action if it is time-expired. It is important that a 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 the file of the person accused and a copy provided to the person concerned. If the allegations are found to have been malicious they should be removed from the employee's personal file.

The purpose of this record is to:

- enable accurate information to be given in response to future references
- prevent unnecessary re-investigation should an allegation re-surface
- provide clarification if a future DBS check revealed the allegation (which did not result in a criminal conviction)

- 8.6 In all other disciplinary actions the relevant documentation will be removed from the file and will be destroyed, with the exception of the letter to the employee which confirms the outcome of the disciplinary hearing. This letter will not, however, form part of any subsequent disciplinary action if it is time-expired.

## **9. Appeals**

- 9.1 *Where an employee appeals against formal disciplinary action taken against them, they must put their grounds of appeal in writing to the Trust Administrator within five*

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*working days of receiving the decision in writing. They must state the reasons for the appeal which will normally be one or more of the following:*

- *there was a defect in the procedure*
- *there was insufficient evidence to support the finding*
- *the disciplinary sanction was too severe*
- *new key evidence, not taken into account at the hearing, has come to light since the hearing which may have an impact on the decision.*

9.2 It is possible that, if new evidence has come to light since the hearing, the matter is referred back to the individual or panel who made the decision rather than proceeding directly to appeal.

9.3 The Appeal will normally be conducted as a 'Review Meeting' unless it is claimed:

- there was a procedural defect at the original hearing such that the hearing was unfair.
- new evidence has come to light which needs to be heard in full.
- there is a dispute about evidence given by one or more witnesses at the original hearing.

Note that this is not an exhaustive list.

In these cases the appeal will normally be conducted as a re-hearing (in full or part). It may be necessary to re-hear the witness evidence at the appeal.

The decision as to whether the hearing will be conducted as a re-hearing or a review meeting rests ultimately with the Appeals Panel.

9.4 For all appeals.

The Appeals Panel will have available all the documents presented to the original hearing. They will also have a copy of the record of the hearing, the letter confirming the outcome of the original disciplinary hearing, the letter of appeal and all other

relevant information. The Appeals Panel will reach findings based on the documentation and the submissions at the appeal hearing from the parties.

#### 9.5 Procedure for Review Meetings

The procedure for a review meeting will be that the employee and/or their representative will first put their case by explaining the grounds of appeal and presenting any relevant evidence. The management case will then be put, responding to the grounds of appeal and presenting any relevant evidence. Opportunities for questioning will be included. Relevant witnesses may be brought by either side and may be questioned by all parties.

#### 9.6 Procedure for Re-hearings

The procedure for a 'rehearing' will be:-

The procedure for a rehearing meeting will be that the grounds for appeal will be clearly established. The management case will then be presented with relevant evidence followed by the employee and/or their representative presenting their response with relevant evidence. Opportunities for questioning will be included. Relevant witnesses may be brought by either side and may be questioned by all parties. The '*Procedure at Disciplinary and Appeal Committee hearings*' may be used as a framework for a re-hearing

#### 9.7 The employee will be given at least five days' notice of the appeal hearing and will be given the following information in a letter:

- who will hear the appeal,
- the procedure to be followed (i.e. a re-hearing or a review meeting)
- date, time and place of the appeal hearing,
- a reference to any key documents that may form part of the hearing and, if appropriate, copies of these,
- the right of the employee to be accompanied by a companion,
- a statement that the employee must take all reasonable steps to attend the meeting,
- the names of any witnesses to be called by those putting the case against the employee; similarly a statement that the employee may call witnesses,
- a statement of the range of possible outcomes of the hearing.

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- 9.8 An appeal against any warning or dismissal will be heard by a panel of three governors/ directors who have not previously been involved in the case. The appeal will normally take place within six working weeks of the appeal request being received by the Trust Administrator.
- 9.10 In cases of gross misconduct, dismissal will be summary following the first hearing and if the employee is reinstated on appeal, pay will be reinstated and backdated to the date of the first hearing. In other cases of dismissal, employees shall be given contractual notice of dismissal following the first hearing. Every effort will be made to conclude any appeal process within the notice period.
- 9.11 The outcome of the appeal will be either:-
- the case against the employee is upheld (in whole or part) in which case the sanction will then be the same or a lesser penalty.
  - the case against the employee is not upheld (i.e. the appeal is successful) in which case any related sanction will be removed.
- 9.12 The Chair of the Appeals Panel must confirm the decision of the Panel in writing to the employee within five working days.

## 10 Further statutory requirements

### 10.1 Disclosure and Barring Service (DBS)

The Safeguarding Vulnerable Groups Act (SVGA) 2006 places a duty on employers of people working with children or vulnerable adults to make a referral to the DBS in certain circumstances. This is when an employer has **dismissed or removed** a person from working with children or vulnerable adults (or would or may have if the person had not left or resigned etc.) because the person has:

- i. Been cautioned or convicted for a relevant offence; or
- ii. Engaged in relevant conduct in relation to children and/or vulnerable adults [i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm]; or
- iii. Satisfied the Harm Test in relation to children and/or vulnerable adults. [i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable adult still exists].

10.2 National College for Teaching and Leadership (NCTL)

Whether or not a teacher who has been dismissed for misconduct is referred to the DBS, they must be referred to the National College for Teaching and Leadership (NCTL).

10.3 Statutory guidance exists which requires employers to see through to a conclusion disciplinary cases linked to child safeguarding. Even in situations where an employee resigns from the school when they could have been dismissed, the case should be heard in accordance with this procedure so that a decision is reached and referral made to the DBS and/or National College for Teaching Leadership (NCTL) can be made as appropriate.

10.4 There is a requirement for any post-dismissal referrals (DBS and/or NCTL) to be completed within one month of employment ending.

**11 Equality Impact Assessment.**

This policy has been reviewed for its impact on issues of equality. The policy has been considered in relation to the following protected characteristics

Gender

Disability

Sexual Orientation

Ethnicity

We have not identified any issues in relation to these protected characteristics. We have carefully considered whether any element of this policy would adversely impact upon the equality of access or opportunity for any staff member or service user, and have been unable to identify any impact which would require mitigation.