



Disciplinary Procedure February 2022

Approved by the Trust Board: 15 February 2022

1. Introduction

The main purpose of the disciplinary procedure is to encourage an employee whose conduct is unsatisfactory to improve. The standards of conduct expected of all employees are set out in the Disciplinary Rules contained in Appendix 1. The procedure serves to ensure that any disciplinary matter is dealt with fairly and consistently and that steps are taken to establish the facts and to give the employees the opportunity to respond before taking any formal action. This procedure has been developed in line with ACAS guidance. It shall apply to all staff employed by DDAT, regardless of length of service and shall be exercised sensitively and with due respect for the privacy of any individuals involved.

This procedure is used to deal with misconduct. It does not apply to cases involving genuine sickness absence, proposed redundancies or poor performance. In those cases reference should be made to the appropriate policy or procedure.

The disciplinary procedure is not contractual and may be varied by the Trust through genuine and meaningful consultation. It has been implemented following consultation with all recognised trade unions and staff.

If an employee has difficulty at any stage of a procedure due to a disability, they should discuss the situation with their line manager or a member of the Trust Board as soon as possible.

The disciplinary procedure is strictly confidential and all aspects, including all documentation and records, shall be treated as such.

- In minor cases of alleged misconduct the manager should initially seek to resolve the matter informally by discussion with the employee and provide informal support where appropriate. These discussions should be held in private and without undue delay whenever there is cause for concern. Where appropriate, a note of such informal discussions may be placed on the employee's personnel file. Please see section 3 for further details.
- The disciplinary procedure is to be used where an employee's conduct is alleged to be unsatisfactory.
- Each step and action under the procedure must be taken without unreasonable delay by either the Trust or the employee.
- The timing and location of meetings must be reasonable.

2. Powers

Where disciplinary action is being considered by the Trust, it will appoint a panel of appropriate status and seniority to hear the case, consisting of at least one director or governor.

Before any disciplinary decision is made the employee will be advised of the allegations against him/her and will be given the opportunity to state his/her case. The employee will be notified in writing of the allegations to be answered (plus any documentary evidence) before the disciplinary hearing.

The employee must make every effort to attend an investigative interview or disciplinary hearing and failure to attend, without good reason, may be treated as misconduct in itself. If the employee fails to attend without good reason, or if he/she is persistently unable to do so (for example for health reasons), the Trust may have to take a decision based on the available evidence.

At any disciplinary hearing or appeal hearing the employee will have the right to put forward his/her case. The Trust will only consider evidence presented by the employee which is relevant to the allegations.

The decision and the reasons shall be communicated in writing to the employee.

An employee will be advised of his/her right of appeal and how to exercise that right.

3. Minor conduct issues – Informal Management Intervention

Minor conduct issues can often be resolved informally between the employee and their line manager. These discussions should be held in private and without undue delay whenever there is cause for concern. It may be determined that following a fact-finding exercise or a formal investigation that informal management intervention may be the appropriate action.

Such action is not considered to be formal action within the terms of the Disciplinary Policy and Procedure; however, an informal record will be kept and progress reviewed. Any employees aggrieved by this process shall have the right to implement the grievance procedure.

The discussions should clarify the areas of concern, establish any action or support necessary to assist the employee to meet the required standard and a review date at which to assess progress may be set. Where appropriate, confirmation of the discussion should be put in writing to the employee, and a copy placed on the employee's personnel file for the duration of the monitoring period as outlined in the letter but will not be relied upon for the purposes of any future disciplinary hearings.

Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).

4. The right to be accompanied

The employee has a statutory right to bring a companion to any disciplinary or appeal hearing. The companion may be either a trade union representative or a work colleague. The employee must tell the disciplinary panel who his/her chosen companion is, in good time before the hearing.

A companion is allowed reasonable time off from their duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

If the choice of companion is considered, when exercising fair discretion, to compromise the fairness and impartiality of the process in any way, the Trust may ask for the employee to choose someone else. For example:

- if in the Trust's opinion the employee's companion may have a conflict of interest or may prejudice the hearing; or
- if the companion is unavailable at the time a hearing is scheduled and will not be available for more than 5 working days afterwards.

The Trust may, at its absolute discretion, allow the employee to bring a companion who is not a work colleague or union representative (for example a member of family) if this will help the employee overcome a disability.

At any meeting under this procedure, the companion may make representations to the Trust and ask questions, but should not answer questions on the employee's behalf. The employee may confer privately with his/her companion at any time during a meeting.

An employee, companion or any other person attending a meeting under this policy must not make electronic recordings of any meetings or hearings.

5. Trade Union Officials

Although normal disciplinary standards will apply to their conduct and performance as employees, no disciplinary action or suspension will be taken until the circumstances of the case have been discussed with an appropriate full-time official. In the case of suspension this may not be practical and should not prevent the Trust taking action.

6. Suspension

In certain circumstances, such as, for example, where the allegations relate to serious misconduct, safeguarding issues or where the employee's continued presence may prejudice an investigation, consideration may be given to suspending the member of staff from their place of work at the outset of the investigation or at any stage during the course of the investigation. When considering suspension, advice will be sought from the Trust's HR Department and consideration will be given to the appropriateness of alternative roles or if reasonable adjustments can be made to the role as an alternative to suspension. Suspension should be undertaken by a director of the Trust or a suitably appointed person by a director.

The suspension will be for no longer than is necessary and the Trust will confirm the specific arrangements to the employee in writing, however, the employee will be required to abstain from their normal duties during such period.

The decision to suspend may only be taken by those with delegated powers from the Board. The Chief Executive Officer or Chair of Trustees have the power to make the decision to suspend the Headteacher and must notify the full Board or Chair of Trustees. Where the Chief Executive Officer is suspended the Chair of Trustees only has the power to do so and must notify the full Board or Chair of Trustees. In other cases the Trust Board should be informed through the Chief Executive Officer/Chair of Trustees. Wherever possible, the decision to suspend an employee should be communicated to them at the School in person. The decision and terms of any period of suspension should always be confirmed in writing.

While the employee is suspended, he/she should not, without the express permission of the Trust or the Headteacher, visit any DDAT premises or contact any of its students, parents, governors, Chair of Trustees, contractors, directors, members or colleagues, unless the employee has been authorised to do so by the Headteacher or DDAT Executive. The employee will be provided with details of a contact officer during the period of suspension, with whom to correspond.

Suspension of this kind is a neutral act and not a disciplinary penalty and does not imply that any decision has already been made about the allegations or imply any guilt. The employee will continue to receive his/her salary during the period of suspension.

Every effort will be made to avoid lengthy periods of suspension. The decision to suspend and the conditions of suspension will be reviewed periodically by the Trust and the employee will be updated as and when necessary.

7. Investigations

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. It may involve interviewing and taking statements from the employee and any relevant witnesses, and/or reviewing relevant documents.

Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action

will be taken until after a disciplinary hearing (hosted by a disciplinary panel) has been held. The Trust will appoint an independent investigating officer who has no prior knowledge of the matter to be investigated. The investigating officer's role will be to conduct a thorough and reasonable investigation and consider whether the matter should be referred to be considered at a hearing. At a disciplinary hearing the investigating officer will be required to present their findings and/or answer queries. They may also be called as a witness at an appeal hearing. For the avoidance of doubt, an investigating officer will have no decision-making role in the disciplinary process and will not be appointed to a disciplinary or appeal panel relating to the allegations.

An employee may be accompanied to an investigative interview by a work colleague or trade union representative.

Any employee required to attend an investigatory meeting will be invited in writing by the Trust, informing them of their right to be accompanied by a work colleague or Trade Union representative.

The employee must co-operate fully and promptly in any investigation. This will include informing the Trust of the names of any relevant witnesses, disclosing any relevant documents to the Trust and attending investigative interviews if required. Failure to comply may lead to disciplinary action.

It is incumbent on the employee, during the investigation stage, to raise details of additional witnesses whom the Trust should interview during the investigation.

Minutes should be taken of all investigatory meetings and these should be signed and dated by all attending parties.

8. Notification of a disciplinary hearing

Following any investigation, if the Trust considers there are grounds for disciplinary action, the employee will be required to attend a disciplinary hearing. The Trust will inform the employee of the allegations against them, the basis for those allegations and what the likely consequences will be if it is decided after a disciplinary hearing that the allegations are upheld. The Trust will also include the following 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;
- (c) Confirmation of whether any witnesses will attend the disciplinary hearing; and
- (d) A copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case the Trust will provide as much information as possible whilst maintaining confidentiality.

The Trust will provide written notice of the date, time and place of the disciplinary hearing. The hearing will be held as soon as reasonably practicable but the employee will be given at least 5 working days' notice.

If the employee or their companion cannot attend the hearing, the employee should inform the Trust immediately and it will arrange an alternative time. If the companion is not able to attend the scheduled hearing and will not be available for more than five working days afterwards, the Trust may ask the employee to choose someone else. The employee must make every effort to attend the meeting and failure to attend without good reason may be treated as misconduct in itself. If the employee fails to attend without good reason or is persistently unable to do so (for example, for health reasons), the Trust may have to take a decision based on the available evidence.

9. Criminal Charges

Where the employee's conduct is the subject of a criminal investigation, charge or conviction, the Trust will investigate the facts before deciding whether to take formal disciplinary action.

The Trust will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where the employee is unable or has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, the Trust may have to take a decision based on the available evidence.

A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if the Trust considers that it is relevant to the employee's employment.

10. Procedure at Disciplinary Hearings

At the beginning of the hearing, the disciplinary panel will introduce those present and the purpose of the meeting. The employee will be reminded of his/her right to be accompanied (if the employee has not chosen to be accompanied by a trade union representative or a work colleague).

The disciplinary panel will go through the allegations against the employee and the evidence that has been gathered. The employee will be able to respond and present any relevant evidence. The investigating officer may attend the disciplinary hearing and present their investigation report and findings. The disciplinary panel and the employee/their representative will be given the opportunity to ask the investigating officer questions and the investigating officer can make any points for clarification before both sides are offered the opportunity to provide a summary. The investigating officer and employee/their representative will then leave the disciplinary hearing.

The employee will be given a full opportunity to ask questions and put forward any mitigating factors which he/she believes are relevant to the allegations. The employee's companion may make representations to the disciplinary panel and ask questions, but should not answer questions on the employee's behalf. The employee and companion may confer privately at any time during the hearing.

Once the employee has been afforded an opportunity to explain their position, the disciplinary panel will either:

- give the decision and explain the reasons for the decision, and confirm it as soon as possible in writing; or
- carry out further investigation as is reasonably necessary and convene a further meeting if appropriate (the employee will be given a reasonable opportunity to consider any new information obtained before the hearing is re-convened); or
- inform the employee that the decision will be given in writing as soon as possible (usually within 5 working days of the disciplinary meeting).

The disciplinary panel may adjourn the disciplinary hearing if the Trust needs to carry out any further investigations in light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider and comment on any new information obtained before a decision is given.

11. Levels of Disciplinary Action

There are four stages, each of which is designed to cover the varying seriousness of the cases. The stages give a proper sequence for persistent cases. Where the case is of sufficient importance or seriousness to use the procedure, disciplinary action will be taken at whatever stage appears appropriate to the circumstances.

The Trust aims to treat all employees fairly and consistently and a penalty imposed on another employee for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.

No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be dismissal without notice and without pay in lieu of notice.

Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain live and the likely consequences of further misconduct in that active period.

The following decisions will be confirmed in writing and usually within 5 working days of the disciplinary meeting:

- **The decision to issue no warning.**
- **Exoneration from the allegations**
- **Informal Management Intervention or to provide informal support.**
- **Sanction 1 - A first warning** may be given where the case is of sufficient importance or seriousness to bring to the attention of the employee formally.
- **Sanction 2 - A written warning** may be given where the case has already involved a first warning and insufficient improvement has been made, where further misconduct has occurred, or where the case is of sufficient importance or seriousness to warrant a written warning without a first written warning.
- **Sanction 3 - A final warning** may be given where the case has already involved a written warning and insufficient improvement has been made, where further misconduct has occurred or where the case is of sufficient importance or seriousness, also where gross misconduct may not warrant dismissal, for example, due to mitigating circumstances.
- **Sanction 4 - Dismissal.** An employee is likely to be dismissed where the case has already involved the final warning and insufficient improvement has been made, where further misconduct has occurred, where the case is so serious as to constitute gross misconduct, or where there is some other substantial reason. For cases of misconduct, dismissal will be with notice.

For cases of gross misconduct, the dismissal may be regarded as summary and there will be no entitlement to notice. In the case of other misconduct, appropriate notice will be given. Where appropriate the employee may be offered pay in lieu of notice or may not be required to attend work during the notice period.

12. Alternatives to dismissal

In some cases, the Trust may at its discretion consider alternatives to dismissal. These will usually be accompanied by a final written warning. Examples include:

- demotion;
- transfer to another department or job;
- loss of seniority;
- reduction in pay;
- loss of future pay increment.

13. The Decision Letter

A letter detailing the decision will be given to the employee and a copy placed on their personnel file, if a warning is issued, as soon as possible after the disciplinary meeting has concluded.

Following the outcome of the hearing the decision letter will state:

- The decision (i.e. that there is no case to answer or the findings and the appropriate level of disciplinary sanction).
- The reason for the decision.
- The course of action to be followed by the employee.
- The time scale in which improvement is required, if applicable.
- Where assistance is required, the assistance which will be made available to the employee (e.g. training and guidance).
- The date on which the warning will elapse.
- That further disciplinary action will be considered if there is further misconduct or insufficient improvement within the time scale of the warning.
- The right of appeal against the decision and how to exercise that right.
- **If the warning is a final warning** it will also state that if the employee's conduct continues to be unsatisfactory or if there is further misconduct it may lead to dismissal.

14. Time Limit for Warnings

All formal warnings shall normally expire after a period of satisfactory conduct of 12 months (written and final written) but this period can be reduced at the discretion of the Trust. In exceptional circumstances the Disciplining panel may consider that the disciplinary warning period should exceed this.

Details of spent warnings shall remain on personal files but shall be disregarded for the purposes of any future disciplinary proceedings, except in exceptional circumstances e.g. where they demonstrate patterns of behaviour which give rise for concern.

Breaches of discipline will be disregarded after the specified period of satisfactory conduct, but will remain permanently on the employee's personnel file. A spent disciplinary warning shall not be referred to on any reference provided by the Trust to a prospective employer. If enquiries are made about spent warnings by a prospective employer, the Trust shall decline to answer such.

15. Right of Appeal

All employees have the right of appeal.

Appeals must be lodged in writing to the Headteacher within five working days of the decision being communicated to the employee (i.e. usually within five working days of the date of the outcome letter).

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 the employee will be reinstated with no loss of continuity of pay or service.

If the employee raises any new matters in his/her appeal, the appeal panel may need to carry out further investigation. If any new information comes to light the appeal panel will provide 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.

The Trust will give the employee at least 5 working days' written notice of the date, time and place of the appeal hearing.

The appeal hearing may be a complete re-hearing of the matter 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. This will be at the Trust's discretion depending on the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.

The appeal hearing will be conducted impartially and where possible, the panel shall be chaired by a more senior person that has not been previously involved in the case. The employee may bring a work colleague or trade union representative to the appeal hearing.

The appeal panel may adjourn the appeal hearing if the Trust needs to carry out any further investigations in the light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before a decision is given.

The appeal panel may:

- confirm the original decision;
- revoke the original decision / exonerate the employee from the allegations; or
- substitute a different penalty.

In the event that a different penalty is substituted, any sanction would not be more severe sanction than was originally applied.

The appeal panel will inform the employee in writing of the final decision as soon as possible and usually within 5 working days of the hearing.

There will be no further right of appeal.

Appendix 1 - Disciplinary rules

Policy statement

These Disciplinary Rules should be read in conjunction with our Disciplinary Procedure and the school's Code of Conduct. The aim of the Disciplinary Rules and Disciplinary Procedure is to set out the standards of conduct expected of all staff and to provide a framework within which line managers can work with staff to maintain those standards and encourage improvement where necessary.

It is our policy to ensure that any disciplinary matter is dealt with fairly and in accordance with the Disciplinary Procedure.

If you are in any doubt as to your responsibilities or the standards of conduct expected you should speak to your line manager or a member of the Trust Board.

These rules have been agreed following consultation with all recognised trade unions and staff.

We may amend our Disciplinary Rules at any time following consultation with all recognised trade unions and staff.

Rules of conduct

While working for the Trust, you should at all times maintain professional and responsible standards of conduct. In particular you should:

- observe the terms and conditions of your contract, particularly with regard to:
 - *hours of work;*
 - *safeguarding;*
 - *teachers standards;*
 - *confidentiality;*
- ensure that you understand and follow our Code of Conduct which is available in the staff handbook;
- observe all our policies, procedures and regulations which are included in the Staff Handbook or notified to you from time to time by means of noticeboards, e-mail, the intranet or otherwise;
- take reasonable care in respect of the health and safety of colleagues and third parties and comply with our Health and Safety Policy;
- comply with all reasonable instructions given by managers; and
- act at all times in good faith and in the best interests of the pupils, parents / carers, staff and others visiting the site.

Failure to maintain satisfactory standards of conduct may result in action being taken under our Disciplinary Procedure.

Misconduct

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

- Minor breaches of our policies including the Sickness Absence Policy, Electronic Information and Communications Systems Policy, and Health and Safety Policy;
- Minor breaches of your contract;
- Damage to, or unauthorised use of, our property;
- Poor timekeeping;
- Time wasting;
- Unauthorised absence from work;
- Refusal to follow instructions;
- Excessive use of our telephones for personal calls;
- Excessive personal e-mail or internet usage;
- Obscene language or other offensive behaviour;
- Negligence in the administration of exams or statutory tests;
- Failure to act in a professional manner with colleagues, pupils, parents, governors, members of the public or other third parties;
- Negligence in the performance of your duties; or
- Smoking in no-smoking areas.

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

Gross misconduct

Gross misconduct is a serious breach of contract and includes misconduct which, in our opinion, is likely to prejudice reputation or irreparably damage the working relationship and trust between us. Gross misconduct will be dealt with under our Disciplinary Procedure and will normally lead to dismissal without notice or pay in lieu of notice (summary dismissal).

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

- Theft, or unauthorised possession or removal of our property or the property of a colleague, contractor, pupil, parent, governor or member of the public;
- Fraud, forgery or other dishonesty, including fabrication of records, expense claims and time sheets;
- Physical violence or bullying;
- Deliberate and serious damage to property;
- Serious misuse of our property or name;
- Deliberately accessing internet sites containing pornographic, offensive or obscene material;
- Repeated or serious failure to obey instructions, or any other serious act of insubordination;
- Unlawful discrimination or harassment;
- Bringing the organisation into serious disrepute;
- Being under the influence of alcohol, illegal drugs or other substances during working hours;
- Causing loss, damage or injury through serious negligence;
- Serious or repeated breach of health and safety rules or serious misuse of, damage to or misappropriation of safety equipment;
- Unauthorised use or disclosure of confidential information or failure to ensure that confidential information in your possession is kept secure;
- Accepting or offering a bribe or other secret payment;
- Accepting a gift above the value of £50.00 from a parent, supplier, contractor or other third party in connection with your employment without prior consent from your line manager;
- Conviction for a criminal offence that in our opinion may affect our reputation or our relationships with our staff, pupils, governors, parents or the public, or otherwise affects your suitability to continue to work for us;
- Possession, use, supply or attempted supply of illegal drugs;
- Serious neglect of duties, or a serious or deliberate breach of your contract or operating procedures;

- Knowing breach of statutory rules affecting your work;
- Unauthorised use, processing or disclosure of personal data contrary to our Data Protection Policy;
- Harassment or bullying of, or discrimination against, employees, contractors, pupils, parents, governors or members of the public, related to gender, sexual orientation, marital or civil partner status, gender reassignment, race, colour, nationality, ethnic or national origin, disability, religion or belief or age;
- 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;
- Giving false information as to qualifications or entitlement to work (including immigration status) in order to gain employment or other benefits;
- Knowingly taking parental, paternity or adoption leave when not eligible to do so or for a purpose other than supporting a child;
- Abuse of a service user;
- Making a disclosure of false or misleading information under our Whistleblowing Policy maliciously;
- Making untrue allegations in bad faith against a colleague;
- Victimising a colleague who has raised concerns, made a complaint or given evidence or information under our Whistleblowing Policy, Anti-corruption and bribery policy, Anti-harassment and Bullying Policy, Grievance Procedure, Disciplinary Procedure or otherwise;
- Serious misuse of our information technology systems (including misuse of developed or licensed software, use of unauthorised software and misuse of e-mail and the internet) contrary to our Information and Communications Systems Policy;
- Undertaking unauthorised paid or unpaid employment during your working hours;
- In respect of employees whose posts are subject to Criminal Records Checks or other clearances, failure to notify line management of any activity likely to result in subsequent criminal investigation, conviction or police caution being served;
- Failure to meet the registration requirements of a statutory body;
- Serious maladministration of exams or statutory tests;
- Abuse of your position to obtain a personal advantage or benefit, or an advantage or benefit for someone else;
- Unauthorised entry into an area of the premises to which access is prohibited.
- Failure to meet safeguarding responsibilities.

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