

<b>Category</b>	Human Resources		
<b>Document Name</b>	Disciplinary Policy		
<b>Accountable Body</b>	RADIUS Trust		
<b>Reference</b>	HR.P2	<b>Date Ratified</b>	13 <sup>th</sup> August 2015
<b>Version</b>	1.5	<b>Last Update</b>	August 2015

### Related Documents

Name	Reference
Support for Suspended Staff	HR.P2.T1

### Reference Material

Guidance
ACAS Code of Practice – Disciplinary and Grievances

### Related Policies

Name	Reference
Capability Policy	HR.P16

### Introduction

1. The disciplinary process is necessary as a way of issuing sanctions/warnings to maintain good standards of behaviour, attendance and job performance but also it should be used to encourage improvement in the delivery of a first class education to pupils.
2. The disciplinary procedure is fair and complies with the ACAS code of practice.
3. This procedure does not form part of any employee's contract of employment and it may be amended at any time. We may also vary this procedure as appropriate in any case.

### Policy Statement

4. The disciplinary procedure is applicable to all employees of the Trust, and will be applied fairly to all. In cases of misconduct which are not gross misconduct and matters which are of a less serious nature, managers may first of all attempt to resolve conduct issues through normal supervision and informal discussion. Where this does not achieve the required improvement then the formal process will be used.
5. It does not serve the best interests of the Trust or the employee to avoid the use of the formal process where it is required, and so it will be used to deal with breaches of the code of conduct, whether misconduct or gross misconduct.
6. Where a person's ability to do the job is in question, then the capability procedure may be a more appropriate process. The key difference is that capability is when an employee does not appear to have the skills, experience or ability to perform to the required standard, whereas disciplinary is when the employee's conduct is in question.
7. All cases will be dealt with fairly and fully investigated before any formal disciplinary action is taken, usually by a member of the senior leadership team and where possible the disciplinary hearing will be conducted by the line manager.
8. The Trust has delegated the responsibility for dealing with disciplinary cases to line management. The person(s) hearing the disciplinary case will normally be the immediate line manager or another

manager within the area. More serious cases may be heard by the Headteacher/Principal or senior manager. In cases involving senior managers, the hearing manager may be the CEO, Governor or Trustee.

9. All employees subject to the disciplinary procedure will have the right to appeal the decision to a more senior person or panel of people.
10. Copies of any formal minutes taken during the disciplinary process will be given to the employee. Copies of letters, evidence and minutes relating to the issue will be held in the employee's personal file and be kept confidential at all times.

#### **Informal Action**

11. If a minor issue of misconduct comes to the attention of the manager, this may be dealt with informally as part of the normal supervisory function. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate.

#### **Formal Action**

12. Where there is a more serious case of suspected misconduct and/or breach of the code of conduct or policies, formal disciplinary action may be taken. Examples of misconduct are given in Appendix 1.

#### **Investigation**

13. An investigating officer will be appointed to conduct an investigation into the suspected misconduct. The purpose of an investigation is for us to establish a fair and balanced view of the facts relating to any disciplinary concerns, before deciding whether to proceed with a disciplinary hearing.
14. The investigating officer will produce a report which will conclude whether or not there is a disciplinary case to answer and whether the investigating officer recommends that the matter progresses to a formal Disciplinary Hearing.
15. Employees do not normally have the right to bring a companion to an investigative interview.
16. Further detail on carrying out an investigation can be found in HR.P2.02.

#### **Suspension**

17. In some circumstances we may need to suspend the employee from work. The suspension will be for no longer than is necessary to investigate the concerns and/or conclude the Disciplinary Procedure and we will confirm the arrangements in writing.
18. Suspension is a precautionary measure and may be contemplated in circumstances including, but not limited to, the following:
  - If the allegation is likely to be gross misconduct if proven.
  - If witnesses are likely to be, or perceive themselves to be, at risk by the person staying at work.
  - If the investigation may be adversely affected by the continued presence of the employee – e.g. in fraud cases or cases of misconduct involving IT equipment - when evidence could be tampered with.
  - If the person under investigation is perceived to be at risk e.g. from harassment as a result of them being under suspicion.
19. In certain circumstances it may be appropriate to move an employee to work in a different role as an alternative to suspension.
20. Conditions relating to a suspension will include a requirement not to return to the workplace or contact colleagues without the consent of the Headteacher/Principal or senior manager. Wilful disregard of this requirement may result in the issue being added to the matters of concern in any disciplinary meeting.

An employee who is suspended is entitled to contact their professional association or trade union representative.

21. Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. You will continue to receive your salary and benefits during the period of suspension.
22. Guidance for suspended staff can be found in HR.P2.01.

#### **Notification of Disciplinary Hearing**

23. After the investigation stage and if there appears to be a disciplinary case to answer, the employee will be informed in writing of the intention to hold a disciplinary hearing, the formal allegations, who will be on the panel, the date/time and place, the right to be accompanied and the right to call relevant witnesses.
24. Included with the letter will be the investigation report with any appendices to form an information bundle of documents which will be considered at the disciplinary hearing.
25. The employee will be permitted reasonable time to prepare for the disciplinary hearing and must make every effort to attend the hearing.

#### **Right to be accompanied**

26. The employee will have the right to be accompanied by a work colleague or trade union representative at any formal disciplinary hearing which could lead to a warning being issued or dismissal being decided or to any appeal hearing.
27. Employees are not entitled to be accompanied to any investigation meeting.
28. The companion may make representations to us and ask questions, but should not answer questions on the employee's behalf. The employee may confer privately with the companion at any time during the hearing.
29. The employee must tell the manager conducting the hearing the identity of the proposed companion in good time before the hearing.

#### **Postponement of the Hearing**

30. In the event that the employee or his/her companion is unable to attend the hearing, then another date will be offered within 5 working days of the first.
31. Any subsequent postponements, or a failure of the employee to attend a scheduled meeting without good reason, is likely to result in the disciplinary meeting being conducted in the employee's absence and a decision being made based on the information available. The employee may be given the opportunity to provide a written submission to be read out at the hearing in their absence. This decision will be made by the Chair of the disciplinary panel taking into account the difficulties that may arise in the School / Charity Office if the matters are left unaddressed for any longer.
32. In the case of sickness absence the employee's union representative may be able to attend on their behalf and read out the statement and ask questions on their behalf to contribute to the process.

#### **The Disciplinary Hearing**

33. It will be up to the Headteacher/Principal or senior manager to decide who will be on the disciplinary panel (other than where the panel is arranged by the CEO or Chair of Governors). The hearing will be chaired by the line manager or another senior manager who has not been involved in the case so far. In

cases which could lead to dismissal it will be chaired by the Headteacher/Principal or senior manager. Where possible, but dependent on the seriousness of the case, the chair may have with them at least one other member of the senior management team or a Governor or Trustee plus an HR Adviser to advise the chair and take notes.

34. The person taking notes is there to record the proceedings, and the notes will be used to assist the chair in making their decision. Notes will be retained with all of the other case material and may be used during any appeal.
35. Both parties will have the opportunity to discuss the allegations and present and discuss their case including the calling and questioning of witnesses if appropriate. Witnesses called by either side should attend only for that part of the hearing necessary to give a witness statement and answer questions; they then leave the room.
36. Each side will have the opportunity to consider any further information which may come to light during the hearing, but if this happens and further investigations are needed then the hearing may need to be adjourned.
37. The decision will be confirmed in writing following the disciplinary hearing. The decision will explain reasons for the decision and will outline any disciplinary sanction.

### **Levels of Disciplinary Action**

*Please note that is not necessary to progress through all of the levels of action sequentially; it is possible to move directly to Level 2 or 3 providing the level of sanction is fair and can be justified in the circumstances.*

#### **Level 1 – First Written Warning**

38. A first written warning is usually merited:

- In the first instance of a misconduct case; or
- In the case of several minor offences.

A first written warning will usually be expressed to remain effective for a period of 6 months.

### **Level 2 - Final Written Warning**

39. A final written warning will be given where:

- Another breach of discipline occurs within the timescale of a written warning; and/or
- The misconduct is sufficiently serious as to warrant a final written warning but insufficiently serious to justify dismissal (in effect both first and final written warning).

A final written warning will usually be expressed to remain effective for a period of 12 months.

### **Level 3 - Dismissal**

40. If dismissal is the outcome of the hearing then the letter advising the employee will state the date on which employment will terminate.

#### **Dismissal with Notice:**

41. Dismissal with appropriate notice will be the disciplinary action in the following circumstances:

- Where there is misconduct during a probation period;
- Where another breach of discipline occurs during the timescale of the final written warning which is not gross misconduct;
- Where a single act of misconduct is sufficiently serious to warrant dismissal, but does not constitute gross misconduct

#### **Dismissal without Notice - Gross Misconduct:**

42. Gross misconduct is defined by ACAS as “misconduct serious enough to destroy the employment contract between the employer and employee and make any further working relationship and trust difficult”.

43. Following the disciplinary hearing and where gross misconduct has been proven, the employee may be dismissed without notice. In this case the date of termination will be the date of the letter advising of the dismissal.

#### **Action short of dismissal**

44. Depending on the severity and circumstances of the misconduct, in exceptional circumstances, the management may consider alternative actions to dismissal such as relegating or demoting the employee to a lower grade post.

#### **Right of Appeal**

45. The employee will have the right to appeal against the disciplinary decision if he/she disagrees with it.

46. The employee must lodge their appeal in writing to the person who sent them the original decision letter within 5 working days of receipt of the letter, setting out the reasons for their appeal.

47. The appeal must clearly state the grounds of the appeal and not just that they disagree with the outcome. The grounds may fall into one of the following categories:

- That the process of the investigation was unfair.
- That the conduct of the hearing did not follow a fair procedure.
- That the decision of the hearing did not consider all the facts and/or essential information was ignored.

- The outcome is unfair in relation to the findings.
48. The person receiving the appeal will make the Headteacher/Principal or senior manager aware of its receipt and the chair of governors will also be advised. The CEO will decide who should hear the appeal taking into account the following:
- That those hearing the appeal should have not previously been involved in the case.
  - That those hearing the appeal will be at a level equal to or higher than the manager who made the decision against which the employee is appealing.
  - That all appeals against dismissal, regardless of the policy under which the dismissal decision was made, will usually be heard by a member of the Personnel and Pay Committee. These appeals will usually be advised by an appropriate HR adviser.
49. An appeal will normally be heard by a minimum of two people, one of whom will be appointed the Chair.
50. The appeal hearing will normally be held within 10 working days of the receipt of the letter of appeal. The Chair of the Appeal Panel will arrange for the meeting to take place ensuring that all parties can be present. Should this not be possible, the Chair will write to the employee explaining the reasons for the delay in hearing the appeal.
51. The appellant will be given reasonable written notice of the date and time of the appeal hearing and will be reminded of their right to be accompanied at the meeting.
52. The appeal panel may be able to conduct the appeal based on the documents and information available, or it may decide to adjourn the appeal hearing to conduct further investigation into the matter.
53. 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 our discretion depending on the circumstances of your case. In any event the appeal will be dealt with as impartially as possible.
54. Those considering the appeal will have the authority to: confirm the original decision; revoke the original decision; or substitute an alternative penalty.

### The Decision

55. The decision of the appeal panel will be confirmed in writing without unreasonable delay. A copy of the decision letter should also be available to the School / Charity Office and be passed to the Trustees/Directors where appropriate. There is no further right of internal appeal.

## Appendices

### Appendix 1 - Examples of Misconduct

The code of conduct sets out what is expected of everyone who works in the School / Charity Office. Here are examples of conduct which could lead to disciplinary action. This is by no means meant to be exhaustive and other behaviour may constitute misconduct or gross misconduct. These examples should be used as a guide.

#### Gross Misconduct

Gross misconduct is serious misconduct which in our opinion is likely to prejudice the organisation or its reputation or to destroy the employment contract between the employer and employee and make any further working relationship and trust difficult. Gross misconduct will usually lead to dismissal without notice or payment in lieu of notice (summary dismissal)

#### Examples of Gross Misconduct

Acts which may take place in the course of employment:

- a. Any act which could be subject to criminal proceedings such as theft, fraud, sexual misconduct with a pupil and physical assault.
- b. Being under the influence of drink or drugs (other than those which have been medically prescribed) so that performance of duties is detrimentally affected and/or which could endanger anyone's safety.
- c. Acts of verbal or physical abuse against pupils, colleagues or any other person.
- d. Harassment and bullying - particularly against people on the grounds of race, disability, sex or sexual orientation, religion or belief and other personal harassment.
- e. Deliberate falsification of qualifications or information which is a stated requirement of employment and/or which would result in financial gain.
- f. Misuse or falsification of information including deliberate disclosure of information about an employee or pupil to anyone who should not have the information or not disclosing information which should be known during recruitment.
- g. Failure to disclose criminal records accurately on a DBS form.
- h. Doing unauthorised private work (whether paid or not) during hours when contracted to work for the organisation or during periods of sick leave.
- i. Serious breaches of safety regulations endangering themselves or other people, including deliberate damage to, neglect or misappropriation of safety equipment.
- j. Deliberate disclosure without authorisation of information about an employee or pupil.
- k. Smoking in designated non smoking areas.
- l. Malicious damage to School / Charity Office property.
- m. Deliberate refusal or wilful failure to carry out a reasonable and lawful direct instruction given by management during working hours.
- n. Serious insubordination.
- o. Performing, arranging or carrying out any work or activity which could be considered to be in competition with, or which adversely affects in any way the School / Charity Office interests.
- p. Being in possession of or dealing in illegal drugs whilst at work.
- q. Any conduct likely to cause harm to the reputation of the School / Charity Office or relationship with the School's pupils and parents.
- r. Unauthorised access to or disclosure of any part of the School / Charity Office computer data.
- s. Serious misuse of the School / Charity Office email/internet or other computing resources.
- t. Abandoning duty without notification and unauthorised absence.
- u. Serious non-compliance with the School / Charity Office Sickness Absence Procedure.

*Acts which may take place outside the course of employment.*

Criminal offences committed outside the course of employment will be considered according to the particular circumstances of the case, but dismissal will result where:

- a. Employment by the organisation in any way enabled or assisted in the commission of the offence.
- b. The organisation's property was used to aid the commission of the offence.
- c. Any act which could indicate that continued employment would put at risk those served or employed by the School / Charity Office.
- d. Acts that bring the organisation into disrepute by damaging the good name of the School / Charity Office - fighting or other criminal acts which do not fit the professional behaviour expected by staff in an educational setting.

#### Other Misconduct

The following are examples of other misconduct which will result in appropriate disciplinary action being taken and appropriate sanctions being applied. Please note that this list is not exhaustive but gives an indication of actions/behaviour that could constitute misconduct.

- a. Failure to obey a reasonable instruction by the manager or a responsible colleague.
- b. Failure to carry out duties in a professional manner, adhere to professional standards of behaviour or statutory/ legal requirements.
- c. Unauthorised possession of alcohol at work.
- d. Offensive or abusive behaviour (including any sexual misconduct).
- e. Rudeness towards staff, students or members of the public, bullying or bad language.
- f. Unauthorised absence from work or being late or not following the absence reporting procedures.
- g. Neglect of duty - failing to complete the contractual duties of the post or failing to keep to deadlines/schedules of work reasonably expected of most employees whether or not these are expressly agreed in the job description/contract.
- h. Not accounting properly for any money or property which comes into the possession of an employee during the course of duty.
- i. Misuse of materials, equipment or resources belonging to the School / Charity Office.
- j. Discrimination against a person on any grounds and particularly including; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- k. Failure to comply with the health and safety policy and procedures including any dangerous or reckless behaviour likely to diminish the safety standards.
- l. Soliciting or accepting gifts or gratuities other than those agreed by a senior manager.
- m. Failure to devote the whole of the employee's time, attention and abilities to the Trust's business and its affairs during the employee's normal working hours.
- n. Unauthorised use of email and internet.
- o. Unauthorised use or negligent damage or loss of the Trust's property.
- p. Failure to report immediately any damage to property or premises caused by the employee.
- q. Use of the Trust vehicles without approval or the private use of the Trust vehicles without authorisation.
- r. Failure to report any incident whilst driving the Trust vehicles, whether or not personal injury or vehicle damage occurs.
- s. If the employee's work involves driving, failure to report immediately any type of driving conviction or summons which may lead to a conviction.
- t. Carrying unauthorised goods or passengers in the Trust vehicles or the use of the Trust vehicles for personal gain.



**RADIUS**

Special Education Trust

- u. Poor timekeeping including taking excessive meal/smoking or other breaks.
- v. An isolated incident of short duration of unauthorised absence.
- w. Failure to notify sickness absence promptly.
- x. Excessive and unacceptable levels of short term absence.
- y. Non-compliance with the School / Charity Office Sickness Absence Procedure.