

## Staff Discipline Policy

This policy applies across all partner schools in the Stephen Sutton Multi-Academy Trust (SSMAT). It is available on the SSMAT website and is accessible from our schools' websites.

### **POLICY APPROVAL and REVIEW**

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## **CONTENTS**

1. Introduction / Overview
  2. Principles
  3. Acceptable Behaviour and Conduct
  4. Minor Conduct Issues
  5. Links with Other Policies and Procedures
  6. Formal Disciplinary Process
  7. The Right to be Accompanied
  8. Suspension
  9. Action against Trade Union Representatives
  10. Criminal Offences
  11. The Disciplinary Hearing
  12. Disciplinary Penalties
  13. Warnings
  14. Appeals
- Appendix 1 – Examples of Expected Standards of Behaviour
- Appendix 2 – Examples of Gross Misconduct
- Appendix 3 – Investigation Procedure
- Appendix 4 – Formal Meeting Procedure
- Appendix 5 – Suspension Procedure

## **1. Introduction / Overview**

- 1.1 The purpose of this policy is to set out the standards of conduct expected of all colleagues in the Stephen Sutton Multi-Academy Trust (SSMAT) and to ensure that all disciplinary matters are dealt with fairly and consistently. This procedure does not deal with performance or sickness absence issues, as these are addressed by separate policies.
- 1.2 The 'appropriate level of authority' is determined according to the SSMAT Scheme of Delegation. This policy applies to employees of the Trust, referred to in this policy as colleagues.
- 1.3 The policy applies to all colleagues, regardless of length of service, and can be varied from time to time in consultation with the recognised trade unions.
- 1.4 The policy is monitored periodically to judge its effectiveness and is updated in accordance with changes in the law. In particular, SSMAT monitors its impact on equality and fairness and consults appropriately on any proposed changes.

## **2. Principles**

- 2.1 All managers have a duty to ensure that they and the colleagues for whom they are responsible, are aware of, and comply with, the Trust's policies and procedures. Managers are also responsible for making sure that colleagues know when they are not achieving or maintaining the expected standards of conduct or behaviour.
- 2.2 All colleagues have a responsibility to be aware of, and conduct themselves in line with, the law and maintain acceptable standards of conduct and behaviour. Where relevant, colleagues must adhere to codes of practice or standards associated with their profession or occupation. Colleagues must also cooperate with disciplinary investigations, as required.
- 2.4 SSMAT and its schools are committed to equality and diversity and will make reasonable adjustments to the application of this policy, in line with our equal opportunities commitment.

## **3. Acceptable Behaviour and Conduct**

- 3.1 The Trust expects all colleagues to meet high standards of behaviour and conduct, observing the Trust's and school's codes of conduct (as appropriate). Examples of the types of expected standards of behaviour are detailed in Appendix 1.

## **4. Minor Conduct Issues**

- 4.1 Where there are minor concerns regarding a colleague's conduct, their manager adopts an informal approach to help, guide and advise them on how to improve their conduct. The manager only considers dealing with minor disciplinary breaches through the formal stages of the procedure if misconduct continues or the misconduct is considered to have the potential to develop into more serious misconduct.

- 4.2 Cases of minor misconduct are usually dealt with informally, through a confidential conversation about the concerns and the actions required for the conduct to reach the required level. In some cases, a manager may decide that additional training, coaching and advice may be needed.
- 4.3 The purpose of any informal meeting is to improve a colleague's conduct, to identify and examine any areas of concern and to provide a reasonable opportunity for them to respond and to identify the factual accuracy of any concern that has been raised. The manager must ensure that the colleague understands any future expectations of their conduct. Where appropriate, an action plan is developed, designed to bring about improvements in the colleague's conduct. The colleague is asked to agree that the action plan is achievable and realistic and should raise any concerns that they have about the action plan with the manager. Notes of any discussions and follow-up correspondence are kept on the colleague's personal file, but no note is made on their disciplinary record.
- 4.4 Where the behaviour causing concern may be related to an underlying relationship issue, it may be appropriate to consider an independent third party, such as a mediator, to help resolve the situation, rather than addressing the matter through disciplinary action.
- 4.5 In the event that the matter cannot be resolved informally, or the matter is too serious, the formal disciplinary process applies. Although the stages of the disciplinary process are normally followed sequentially, the formal process may commence at any stage, taking account of nature and seriousness of the alleged misconduct.
- 4.6 No formal disciplinary action is taken, until the allegations have been fully investigated.

## **5. Link with Other Policies and Procedures**

- 5.1 **Grievance Policy:**  
Where a grievance complaint is submitted during disciplinary proceedings, this does not normally stop the proceedings from progressing. However, the disciplinary proceedings may be temporarily suspended, in order to deal with the grievance, or (where they are related) the grievance and disciplinary processes may be run concurrently. Where it is asserted that the disciplinary proceedings that are being undertaken are unlawfully discriminatory, or are motivated by reasons other than misconduct, there are grounds for raising a grievance.
- 5.2 **Managing Attendance at Work Policy:**  
Where a colleague is absent due to sickness, whilst a disciplinary matter is pending, the 'Managing Attendance at Work' procedures apply, as normal. Due regard is given to information provided by medical professionals, including the Occupational Health Service and the colleague's own GP. As appropriate, an Occupational Health referral is made, enabling an assessment to be made of a colleague's general health

and whether, or not, they are fit to participate in disciplinary procedures. Being absent from work due to sickness does not automatically stop the disciplinary procedure from progressing.

## **6. Formal Disciplinary Process**

6.1 Prior to any formal disciplinary decision being made, the following steps will be taken:

- An investigation is carried out, in accordance with the Investigation Procedure (Appendix 3). In the circumstances where an allegation has been made against a colleague, they are notified of the nature of the allegations that are to be investigated, prior to the Investigation Meeting. The extent of the investigation involved varies, depending on the allegations in question and the characteristics of the situation. Investigations are dealt with as confidentially as is reasonably practicable, and with sensitivity, in line with the Investigations Procedure.
- If, following investigation, it is reasonably believed that there are grounds for disciplinary action, the colleague concerned is required to attend a Disciplinary hearing. They will be invited to the hearing, in writing, in accordance with the Formal Meeting Procedure (Appendix 4). The colleague is provided with the written details of the allegations against them (that will be used at the hearing), at least 10 working days before the hearing takes place. The colleague provides copies of any relevant evidence, to which they intend to refer at the hearing, at least three working days before the hearing takes place. At the hearing, the case against them is explained and they have the opportunity to respond to the allegations.

## **7. The Right to be Accompanied**

7.1 A colleague has the right to be accompanied by a companion at any meeting / hearing, as part of the investigatory or formal disciplinary procedure. The companion may be a colleague, a trade union representative or an official employed by a trade union. Under this procedure, a colleague does not have the right to be accompanied by anyone else (such as a spouse, partner, other family member or legal representative). Furthermore, it is not generally reasonable for a colleague to insist on being accompanied by a companion whose presence is likely to prejudice the hearing. It is also not reasonable for a colleague to ask to be accompanied by a companion from a remote geographical location, hence potentially delaying the process, if someone suitable and willing is available on site. Where appropriate, eligible colleagues, e.g. those with disabilities or language difficulties, may be joined by a supporter or interpreter.

- 7.2 The companion is allowed to address the hearing / meeting, to put forward and sum up the case, respond on the colleague's behalf to any views expressed at the meeting and confer with them during the hearing. They may also request an adjournment and ask questions of anyone present. The companion does not, however, have the right to answer questions on the colleague's behalf, address the hearing without the colleague's permission to do so, or prevent the manager from explaining their case. Other than confirming that all parties have the same documentation, there is generally no need to read out its content.

## **8. Suspension**

- 8.1 Depending on the circumstances, a colleague may be suspended from work, on full pay, during an investigation. Suspension on full pay is not a disciplinary penalty and neither is it a presumption of guilt. Suspensions are carried out in accordance with the Suspension Procedure.

## **9. Action against Trade Union Representatives**

- 9.1 Disciplinary action against a trade union (TU) representative can lead to a serious dispute if it is seen as an attack on their functions. Whilst a TU representative's conduct is subject to the same expected standards as any other colleague, the relevant full-time official is notified of any action (including suspension) that the school proposes to take. All reasonable efforts are taken to ensure that disciplinary action is not taken against a TU representative, until the relevant full-time official has had an opportunity to be present at any stage of the formal procedure.

## **10. Criminal Offences**

- 10.1 Certain criminal offences may affect a colleague's suitability to continue in their role or damage their reputation of the school / Trust. Any colleague who is charged with a criminal offence informs their manager, without delay. Notification of criminal proceedings, or convictions (including 'bind-overs' and cautions), are not viewed as an automatic reason for dismissal, or for any other form of disciplinary action. The school will decide on a course of action, as appropriate, after a proper review of the matter has been undertaken.
- 10.2 If a colleague is the subject of a criminal investigation, the school determines to what extent it needs to conduct its own investigation, before deciding whether, or not, to proceed with formal disciplinary action. The school / Trust does not generally wait for the outcome of any prosecution before deciding what action to take (unless there is good reason to do so, taking into account the advice, or direction, of the police). No decision to impose a disciplinary sanction (including dismissal) is taken, without the colleague concerned having the opportunity to make representations.
- 10.3 If a manager has reasonable grounds to suspect that the potential misconduct involves child protection / safeguarding, fraud, systems abuse, theft, or any

financial irregularity, the relevant agencies (including the Local Authority Designated Officer for safeguarding (LADO), internal auditors and/or the police) are notified, without delay.

## **11. The Disciplinary Hearing**

- 11.1 Formal hearings are conducted in line with the Formal Meeting Procedure. A colleague must make all reasonable efforts to attend a disciplinary hearing. If they, or their companion, is unable to attend a hearing, they may propose a new date, of no more than 5 working days on from the original date.
- 11.2 The manager will respond sensitively when a delay is required, as this may arise for a reason related to a disability or an emergency involving dependants. Another hearing date will be scheduled, if a good reason is provided for being unable to attend.
- 11.3 If a colleague does not attend the hearing without good reason, the hearing may be rearranged, but if they subsequently do not attend the rearranged hearing, a decision may be made in their absence. A colleague may submit a written statement, to be taken into consideration in their absence.
- 11.4 The disciplinary hearing is conducted, under the Formal Meetings Procedure, by the Deciding Manager<sup>1</sup> with the appropriate level of authority under the school's decision-making structure.
- 11.5 The Deciding Manager explains the allegations against the colleague and outlines the evidence in support of those allegations. The colleague has the opportunity to respond to the allegations and present their own evidence, if they wish. A colleague may request that a witness, or witnesses, attend the hearing. However, where character witnesses should not attend; witness statements may be provided, as an alternative. Furthermore, witnesses whose evidence is not challenged are not called. Where a witness is required to attend, the Deciding Manager invites them in writing.
- 11.6 Minutes of formal meetings will be given to you for your information and copies of notes, letters and action plans should be retained by the line manager.

## **12. Disciplinary Penalties**

### **12.1 STAGE 1 – FIRST WRITTEN WARNING**

A first written warning may be issued by the Deciding Manager and will usually be appropriate for a first act of misconduct, where there are no previous warnings and where any agreed adjustments and other support has been made or provided. The warning will remain active for six months and is disregarded, for disciplinary purposes, after this period.

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<sup>1</sup> The disciplinary hearing may be conducted by a Panel of Governors

## 12.2 STAGE 2 – FINAL WRITTEN WARNING

A final written warning may be issued by the Deciding Manager in the following circumstances:

- where there has been a further act of misconduct, while an existing warning is in effect; or
- where the seriousness of the misconduct is sufficient to warrant such a warning, even though no previous warning may have been issued.

The warning remains active for 12 months and is disregarded, for disciplinary purposes, after this period.

## 12.3 STAGE 3 - DISMISSAL

Only a Panel with an appropriate level of authority (as outlined in school and Trust governance documentation) can take a decision to dismiss a colleague. A dismissal may occur in the following circumstances:

- where, within the duration of the final written warning, the necessary improvement in behaviour has not been achieved, despite the school having made any agreed adjustment(s) and having provided any agreed support. ; or
- where there has been a further act of misconduct, while an existing warning is in effect.

In these circumstances, dismissal is with notice, or with payment in lieu of notice. Alternatively, dismissal may occur:

- where it is reasonably believed that a colleague has committed an act of gross misconduct. Examples of gross misconduct are listed in Appendix 2.

Gross misconduct usually results in summary dismissal, without notice and without pay in lieu of notice.

The Panel may, at their discretion, consider alternatives to dismissal. Examples of such alternatives include: demotion; reduction in pay; and compulsory training. Where any such alternative measure is applied, it may also be accompanied by a final written warning.

## 13. Warnings

- 13.1 When a warning is issued, it is confirmed in writing within five working days of the hearing. The warning outlines the misconduct that led to the warning, the action or improvement required, the duration of the warning and the likely consequences of the action not being taken, the improvement not being made and/or any further misconduct. The colleague is also advised of the right of appeal and the person to whom an appeal should be made.



## **14. Appeals**

14.1 Where disciplinary action is taken, if a colleague is dissatisfied with the decision, they can appeal. The appeal must be in writing, setting out the grounds of the appeal, on the basis that:

- the evidence does not support the finding (that the colleague was guilty of committing the alleged act (or acts) of misconduct);
- the severity of the disciplinary sanction imposed is too great, taking into account the nature of the misconduct and the mitigating circumstances;
- the correct procedure was not followed;
- new evidence, that was not considered in the disciplinary hearing, has come to light that would change the outcome;
- the sanction is inconsistent with how others have been treated; or
- there was unlawful discrimination in the handling of the disciplinary procedure.

The written appeal request should include all of the information to which the colleague will refer at the appeal hearing. The appeal is sent to the Appeal Deciding Manager, within five working days of receipt of the letter notifying the colleague of the disciplinary decision. The action taken at the disciplinary hearing remains in force, pending the outcome of the appeal.

14.2 The colleague is invited to the appeal hearing, in writing, in accordance with the Formal Meeting / Hearing Procedure. They are given at least 10 working days' notice of the appeal hearing and have the right to be accompanied at the hearing by their companion. Any relevant evidence, to which the colleague intends to refer during the appeals hearing, must be provided to the Appeal Deciding Manager, at least three working days before the hearing.

14.3 The outcome of the appeal may be to overturn or confirm the original decision, or it may be to apply a different, but not more serious, sanction. The colleague is advised of the appeal outcome, which is confirmed in writing within 5 working days of the appeal hearing. There is no further right of appeal.

14.4 A colleague is entitled to raise a further complaint under the SSMAT Grievance Policy (or Complaints Policy) in relation to the same grounds of appeal.

***Stuart Jones; Sept '20***

## **Appendix 1 - Examples of Expected Standards of Behaviour**

The following are examples of the behaviour expected the of all SSMAT colleagues:

- Attend work punctually and regularly, in line with operational requirements
- Carry out reasonable requests, made by line managers and other senior staff, promptly and efficiently, and to the required standard
- Ensure that time off work is approved, in advance, by someone with an appropriate level of authority (usually the line manager) and ensure that all contractual obligations are observed
- Follow the procedures outlined in the 'Managing Attendance at Work' Policy, when notifying the school of your sickness absence
- Comply with the Trust's, and the school's, policies and procedures
- Adhere to professional body and statutory guidelines, as appropriate, and act professionally at all times
- Bring serious breaches of policies or procedures to the attention of senior leaders

(The list is not exhaustive)

## **Appendix 2 - Examples of Gross Misconduct**

The following are examples of gross misconduct:

- Action that has caused, or is likely to cause, a child significant harm
- Failure to take action to protect a child believed to be suffering, or likely to suffer, significant harm
- Actual, or threatened, violence or bullying behaviour
- Theft or unauthorised removal of property, fraud, falsification of the Trust's / school's records, or any other dishonesty
- Deliberate or serious damage to the Trust's / school's property, or that of a colleague, customer, contractor or authorised visitor
- Serious negligence which results, or could result in, loss, damage or injury
- Deliberately accessing, copying or distributing pornographic, offensive, obscene or otherwise inappropriate material
- Being under the influence of alcohol, drugs or other similar substances at work, which may give reasonable grounds to suspect that the ability to undertake duties is significantly compromised; or being in possession of illegal or intoxicating drugs on site
- Refusal to obey reasonable instructions, or any other act of serious insubordination
- Any action or behaviour that brings the Trust / school into serious disrepute
- A serious breach of Health and Safety rules
- Unauthorised disclosure of confidential information
- Acceptance of bribes, or other secret payments
- Harassment, or any act of discrimination towards any encountered because of work
- Convictions relating to activities outside work, which have a significant and direct bearing on employment and duties with the Trust / school and the reputation of the Trust / school.

- Misrepresenting at any time, including on appointment, any previous positions held, qualifications, date of birth, declaration of health; or a failure to disclose a criminal offence or a pending criminal action, subject to the provisions of the Rehabilitation of Offenders Act 1974

(The list is not exhaustive)

## **Appendix 3 – Investigation Procedure**

### **General Requirements**

In order to give effect to the Trust’s policies and procedures, there needs to be a manager in a deciding role. Such a manager is known as the ‘Deciding Manager’ to differentiate this role from that of the ‘Investigating Manager’. The Deciding Manager may consider that a matter should not be dealt with informally and so requires a formal investigation. The purpose of an investigation is to enable the Deciding Manager to establish, as far as possible, the facts behind any grievance, bullying and harassment complaint or disciplinary allegation, in order to decide how to progress issues through the relevant procedures. This procedure applies to employees of the organisation, referred to in this guidance as colleagues. The School’s decision-making structure details the appropriate levels of authority for formal action.

The form of investigation will depend on the nature of the allegation(s) and will vary from case to case. It is important to keep an open mind and look for evidence that supports the colleague’s case, as well as evidence against it.

The manager leading the investigation will be referred to as the Investigating Manager for the purposes of this procedure. Investigations must be carried out by managers who have sufficient skills and experience to complete an effective investigation, taking into account the nature of the case.

Any formal investigation must not be undertaken by anyone who is either a witness to events and/or who will oversee any subsequent proceedings.

Depending on the seriousness of any allegations, the investigation may, in straightforward cases, be a short consolidation and chronology of facts or, in more extreme circumstances, necessitate a more detailed inquiry involving the gathering of complex evidence and statements. In all cases, the Investigating Manager needs to provide enough information for the Deciding Manager to be in a position to make a reasonable decision, based on reasonable grounds.

Anyone involved in the investigation must be treated fairly, reasonably, and with courtesy and respect, recognising the need for confidentiality. Colleagues involved with the investigation are to comply with the Trust’s equality and diversity principles, giving due consideration to any particular needs of those participating, which may arise due to cultural, personal, physiological or lawfully protected characteristics or circumstances.

Any reference to ‘the employer’ refers to Stephen Sutton Multi-Academy Trust.

### **Formal Investigations**

Where a Deciding Manager initiates a formal investigation, they identify and arrange for an appropriate person, the Investigating Manager, to carry out the investigation, but retain authority for the investigation process at all times.

Where a manager undertaking an investigation is unable to continue, for unavoidable reasons such as long-term illness or jury service, a substitute is nominated within three working days, by the Deciding Manager. Similarly, where the Deciding Manager becomes unavailable for unavoidable reasons, a substitute is nominated.

When a Deciding Manager initiates an investigation, they brief the Investigating Manager on the following points

- Why the investigation has been instigated
- Details of any allegations that have been made
- The sequence of events leading up to the investigation
- Whether the colleague has been suspended
- When and how the colleague was made aware of the allegations made against them

The Investigating Manager should:

- Ensure that at all times they treat the investigation as confidential
- Clarify which policy the investigation is being carried out under
- Clarify the issues to be investigated and consider the school's definitions under the relevant policies e.g. harassment and bullying
- Consider the sequence in which witnesses will be interviewed (including the colleague under investigation, where applicable)
- Consider what points actually need to be evidenced or proven
- Consider how a particular witness will contribute to the investigation
- Consider what questions need to be asked to establish appropriate facts
- Consider what other evidence they will need to review
- Arrange for a note-taker to be employed, as required

It is essential to ascertain who has witnessed the events so that facts can be gathered as soon as possible and before memories fade. Any investigation should be commenced within **5 working days** of a decision to instigate the investigation.

Wherever possible, investigations into the allegations or complaint should be completed within **40 working days**. Any delays in completing the investigation must be fully documented and the relevant parties kept informed. The nominated Investigating Manager must be able to devote sufficient time to the investigation without being distracted by his/her primary role. The Deciding Manager will monitor timescales and take action where necessary, throughout the investigation. Investigation meetings should be held as quickly as possible and without unreasonable delay. The Investigating Manager should, as appropriate, seek specialist advice on procedural matters and HR implications.

At the investigation stage, if a complaint or allegation has been made against a colleague, or where a colleague is raising a grievance or a complaint, the colleague is given a reasonable opportunity to ask the Investigating Manager to interview relevant and important witnesses and any such request will not be unreasonably denied. They must specify the name of the witness and explain the reason for the request. Where a request is refused, the colleague

may appeal the refusal to the Deciding Manager who will make a determination on the merits of the request. The Investigating Manager focuses on finding witnesses whose evidence will have a specific and direct bearing on the investigation, including the need to achieve corroboration. The investigation should avoid multiple witnesses who will not add anything further to the investigation, i.e. witnesses who are only going to confirm facts already established.

Where there are reasonable grounds to suspect that the potential misconduct or complaint involves child protection or safeguarding, fraud, systems abuse, theft, or any financial irregularity, the relevant agencies (including internal auditors and/or the police) are contacted without delay.

Where allegations are made anonymously, the action taken depends on the nature and content of the allegations.

Colleagues must co-operate fully and promptly in any investigation. This includes informing the Investigating Manager of the names of any relevant witnesses, disclosing any relevant documents to them and attending investigative interviews, as required.

### **Investigating Allegations against Colleagues**

Where an allegation is made against a colleague, the colleague under investigation is required to co-operate reasonably with any investigation, but cannot be compelled to make a statement against his or her will. A colleague who is signed off sick is not necessarily unfit to be interviewed and, unless there is medical advice to the contrary, e.g. from the Occupational Health Service, they should co-operate with the investigation. The investigation process can be stressful to all concerned. Providing appropriate support and/or counselling (as appropriate) should be considered for all parties involved in the investigation process.

Refusal to give a statement must not be viewed as a sign of guilt, but the colleague must be advised that:

- Unreasonable refusal to co-operate with the investigation may in itself be considered a disciplinary matter
- The investigation will nevertheless proceed and a decision on what further action could be taken may have to be made without them having put forward their case
- Their refusal to give a statement will be recorded as part of the investigation.

The colleague under investigation must be given every chance to state their case and, therefore, will be interviewed as part of the investigation (unless, for example, they have been declared unfit to be interviewed). The Investigating Manager must keep an open mind and not assume 'guilt' or 'innocence'. If there is more than one allegation, each should be dealt with separately, as far as possible, and the colleague must be given the opportunity to respond. There is a right to be accompanied by a fellow worker, a trade union representative or an official employed by a trade union at investigation meetings.

Following an interview with the colleague under investigation, it may be necessary to re-interview previous witnesses (and, consequently, the colleague under investigation) to clarify issues.

If the colleague resigns without giving contractual notice and before the investigation is complete, the Deciding Manager must decide whether or not to accept it. If the resignation is accepted, the Deciding Manager must decide whether to continue with the investigation process in the colleague's absence and, as appropriate, take any relevant action. Where a colleague's resignation has been actioned, there may still be a legal duty for the employer to refer information to the Disclosure and Barring Service, in certain circumstances where they may have been removed from their role if they had not resigned. The employer must ensure that they have complied with the requirements of the referral process.

### **Surveillance and/or Monitoring**

In extremely exceptional and restricted circumstances, covert surveillance or monitoring may be considered, but only in order to gather evidence where criminal activity or equivalent malpractice is suspected. Furthermore, it should only be deployed as part of a specific investigation and should cease once the investigation is completed. Other information collected in the course of any such investigation relating to any colleague who is not the subject of the investigation will be disregarded and, where feasible, deleted.

Covert monitoring will not be used in the workplace generally, or specifically, in places like toilets and private offices, except where there is a reasonable belief based on reasonable grounds that serious crime is occurring and there is an intention to involve the Police.

Prior to undertaking any such surveillance or monitoring, the Deciding Manager must obtain express advice and specific authorisation from the Trust's Executive Director, who will liaise with relevant agencies.

### **Matters Involving Children and Other Vulnerable People**

Any concern of a child protection/safeguarding nature that pertains to a child under the age of 18 should be considered by the Deciding Manager, without delay, for possible referral to the First Response Team. They will initiate any necessary safeguarding activities, and advise upon anything additional the referrer may need to do.

Where concerns relating to a child under 18 involve the possibility of inappropriate behaviour by an adult in a 'position of trust' (e.g. teacher), or an allegation is made directly about an adult in a 'position of trust', then it is a requirement that an 'Initial Discussion' is undertaken with a Local Authority Designated Officer ("LADO") within 24 hours of the concern or allegation arising. The LADO will advise on 'next steps', including possible suspension, how the matter should be investigated and when and who should be told about the matter. There should be no presumption that the adult should be made aware of the concern/allegation prior to contacting the LADO.

Where safeguarding concerns arise in relation to a young adult (over 18) then advice should be sought from the Vulnerable Adults Team – 0845 604 2719



### **Physical Evidence**

Originals, or certified copies of documents, or other items relevant to the case such as timesheets and claims, referred to in the report, and should be attached as appropriate appendices. Objects and artefacts referred to (or certified photographs, where it is not possible to produce an original item, e.g. if it is fixed or too large) should be clearly labelled as exhibits e.g. A,B, C etc., so they can be identified within the report.

### **Record-keeping**

During the investigation, the Investigating Manager should keep copies of paperwork and correspondence and, after the investigation is complete, the paperwork should be attached to the personnel file of the colleague who is under investigation.

### **Dealing with Witnesses and their Evidence**

Witnesses should be interviewed in a quiet place away from their immediate workplace, where confidentiality can be assured, and consideration should be given to providing refreshments and comfort breaks. Interviewees should be advised that they will be required to sign any statement. They must also be advised that their evidence may be shared with the member of staff under investigation and/or their representative and that they could be asked to attend any subsequent hearing, where they may be questioned.

The Investigating Manager should endeavour to obtain 'best' evidence, e.g. first-hand accounts from witnesses who are prepared to give a signed statement. Evidence should be corroborated, where possible, to avoid inconsistencies. Anonymous evidence and hearsay (which relies on what a witness has been told by a third party) may be used but needs to be treated with caution and cannot be relied upon in isolation. Where anonymous evidence is to be used the following steps are necessary. Explore whether the witness had the opportunity and ability to observe clearly what they are asserting and with accuracy. Equally, explore why such details are memorable. Tactful enquires are needed into whether the anonymous informant has suffered at the hands of the accused, or has any other reason to fabricate their evidence.

Witnesses who wish to give anonymous statements should be advised that anonymity cannot be guaranteed if the matter proceeds. This is particularly important if the reason for them wishing to remain anonymous is a fear of reprisal or detriment. If a colleague declines to give evidence, then the reason should be considered and further specialist advice sought before proceeding. In some circumstances, refusing to assist in a work-related investigation could be considered misconduct under the Disciplinary Policy.

Non-colleagues may be invited to give evidence or make a written statement, but cannot be compelled.

Where possible, the evidence should immediately be transcribed into a statement. If this is not possible, due to the length of the evidence, the Investigating Manager should draw up the statement without unreasonable delay. In either case, the witness must be given

sufficient time to read the statement and be offered the opportunity to challenge and clarify the content of the statement. This may be necessary if the Investigating Manager has misunderstood a point the witness had intended to convey. However, if it would represent a radical change to the evidence actually given, the Investigating Manager should leave the evidence as it is but note the witness' concerns and any changes they wish to be made. Their reason for changing their evidence also should be recorded.

On completion of the interview, the witness should be told that they must not discuss their evidence/statement with anyone else, particularly other witnesses or the person being investigated. Witnesses for the person under investigation may reasonably discuss their perception of events with them and/or their representative but must not directly communicate the evidence specifically given to the investigation. All witnesses should also be asked to report immediately any approach, directly or through a third party, by the person under investigation to ascertain the nature of, or attempt to influence, their evidence. Any attempt by the person under investigation to intimidate or influence a witness may be regarded as an act of gross misconduct under the Disciplinary Policy.

### **Investigation Report**

The Investigating Manager prepares a report confirming the process and findings of their investigation. The report should be in a clear and simple format and be written in plain English. The report should be written in a way that the reader can easily ascertain what has led to the investigation, what the key issues are, what the investigator reviewed and what were the findings.

The report will document what facts the investigating Manager has discovered during the investigation and will include any documents that relate to the finding of any such facts. The Investigating Manager must not speculate or make recommendations about whether a formal hearing should be convened (in the case of a disciplinary matter) or what disciplinary sanction may be appropriate, as these are the functions of the Deciding Manager. In some circumstances, it may be appropriate for the Investigating Manager to feed back wider observations to the Deciding Manager and issues that have arisen as part of an investigation. This may include providing suggestions about what action might be taken. e.g. training.

If the Investigating Manager feels that there is evidence to indicate that any alleged misconduct has occurred, or the complaint could be considered malicious or vexatious, the Investigating Manager reports on their findings, explaining why they believe that this has occurred, describing the basis for their belief and referring to any supporting evidence accordingly.

### **Arising from the Investigation - What the Deciding Manager Should Consider**

Factors arising from the investigation which the Deciding Manager should consider include:

- The nature of the alleged misconduct or complaint (as applicable)
- The circumstances, background and context of the issues

- What witness statements reveal
- Whether there are any other facts that can clarify the situation, including any relevant written or electronic records, timesheets etc
- The seriousness/effects of the behaviour/action and/or its relevance to the colleague's job, team and service delivery
- Whether the alleged conduct or action reflects poorly on, or brings the good name of the employer, into question
- Whether there are any work-related factors that may have contributed to the behaviour or actions, such as changes to the team, job or the working environment
- Whether the colleague(s) received appropriate induction, support and training
- Whether there are any personal or underlying factors that might have affected the situation, such as illness, disability, domestic or health problems, or provocation
- Whether there are any other mitigating factors
- Whether there have been previous occurrences without any action being taken
- Whether the colleague had been given any authority, on this or a previous occasion, which would lead them reasonably to believe the action or alleged conduct was acceptable.
- What the employer's policy, procedure or guidance provide for
- Whether there is, or was, an established 'custom and practice' prevailing.

Having considered all the above matters, the Deciding Manager will consider whether there is a case to answer, or not. The Deciding Manager may conclude that there is insufficient evidence to proceed to a formal hearing, or that an appropriate response would be the application of informal counselling or additional training, or else may decide to progress the matter to a formal hearing.

### **Formal Interview Guidance**

Ensure that interviews are held in a suitable venue where you can make sure you will not be interrupted.

Introduction:

- Introduce yourself and outline your role in the investigation.
- Confirm interviewee details (name, job title, length of time with XXX).
- Note date and time of interview.
- Confirm name of colleague's representative (if XXX does not have a representative, confirm that they are aware of their rights to be accompanied and get agreement that they are willing to continue with the interview).
- Describe the investigation's Terms of Reference.
- If an account of the interview is to be taken, confirm this to the interviewee and inform them that a copy will be sent to them for verification.
- Ask if they have any questions for clarification.

Conducting the interview / interview techniques:

- It is vital that any investigation is dealt with sympathetically, with due regard to the feelings and emotions of everyone concerned (including the alleged perpetrator).
- The complainant should be interviewed first, with the aim of obtaining as much detail about the complaint as possible
- Ensure that all persons attending interviews have been notified and informed of their rights to be accompanied by a representative.
- Interview all relevant persons using open (descriptive), closed, hypothetical and probing questions, as appropriate.
- Do not lead interviewees, or 'put words in their mouth'.
- Investigate both angles, which may show a colleague's innocence and/or their guilt.
- Listen carefully to what is being said and do not interrupt when people are speaking
- Attempt to note accurately what is said and probe for clarification.
- Summarise information in chunks to check understanding and/or manage the conversation.
- Repeat what is being said to ensure no misinterpretation.
- Ask for demonstrations and diagrams, as appropriate. that can aid you getting a full picture.
- Pay attention to detail.
- Where the complaint is one of verbal harassment, ask them to say or write the exact words spoken to them. Should any of the interviewees become distressed or aggressive during the interview, it should be suspended for a short period or terminated.
- If it's a grievance, explore with the complainant what they are seeking by way of an outcome, being careful not to make any commitments.
- At the end of the interview, ask if there is anything in relation to the investigation that the interviewee wants to mention that they have not specifically been asked about.

Conclusion:

- An account of the interview will be produced in the form of a statement and a copy will be sent to them for verification and signature.
- Agree timescales for return.
- Explain the plan for the investigation through to the target date for submitting the investigation report to the Deciding Manager.
- Explain potential investigation outcomes and possible consequences.
- Confirm agreement to confidentiality.

## **Appendix 4 - Formal Meeting Procedure**

### **Introduction**

This Formal Meeting Procedure applies to formal meetings, hearings and appeals that are held under the school's Disciplinary, Grievance and Capability policies and procedures.

All parties must be committed to adhering to the timescales set out in the associated policies and procedures and must endeavour to avoid undue delay. Any changes to the timescales must be agreed by the parties.

Appropriate levels of authority are set out in the school's decision-making structure.

### **Interpretation**

Colleague – an employee of the school subject to, or raising, a formal process

Companion – a fellow colleague, or trade union representative or official.

Witness – a person who has provided a statement giving a first-hand account of information that relates directly to the case.

Investigating Manager – the person who conducts the investigation, is not involved in the incident in any way and will not oversee any subsequent proceedings.

Presenting Manager – the person presenting information that is relevant to the case

Deciding Manager – the person or committee hearing the case

Trust Representative – a person authorised by the Trust to advise the Governing Body, under The Education Act 2002

Specialist Adviser – a person with relevant specialist knowledge or expertise, who is employed to support the Formal Meeting, e.g. a Human Resources, ICT or Health & Safety specialist. The Specialist Adviser has no decision-making authority and only attends in an advisory capacity.

Presenting Manager (Appeal) – the person who was the Deciding Manager (or representative of the committee) conducting the first Formal Meeting

Deciding Manager (Appeal) – the person (or committee) hearing the appeal

### **General Principles**

The Deciding Manager hearing the case makes the arrangements for the Formal Meeting. This includes writing to the colleague, arranging the accommodation and making

arrangements for a minute taker. Formal Meeting minutes are shared and an opportunity to amend or comment is given to the colleague.

The Deciding Manager has the authority, skill and experience necessary to consider the facts fairly and make a decision. The Deciding Manager may be supported by a Specialist Adviser.

### **Arranging the Formal Meeting**

A letter inviting the colleague to attend a Formal Meeting, and details of any evidence that will be relied upon, is sent in writing at least **10 working days** before the meeting.

The invitation contains sufficient information about the alleged misconduct or poor performance concerns, and possible consequences, to enable the colleague to prepare to answer the case at the Formal Meeting, including any written evidence, e.g. witness statements. The invitation also gives details of the time and venue for the meeting and advises the colleague who will be present and their right to be accompanied. Colleagues must provide copies of any relevant evidence they intend to rely upon, at least **3 working days** before the Formal Meeting.

### **Attendees at the Formal Meeting**

The **Presenting Manager** presents the allegation(s) and the information gathered during the investigation and answers clarification questions at the Formal Meeting, as required. Any investigation report and written statements are provided as evidence. The Presenting Manager must be available to respond to questions relating to the information presented.

**Witnesses** will not be called to attend the Formal Meeting as standard, unless requested to do so. However, the colleague has the right to request that a witness, or witnesses, attend the Formal Meeting.

Colleagues are expected to present any character witness evidence in writing, rather than require the witness to attend the meeting. Witnesses whose evidence is not challenged will not be called. Where a witness is required to attend, the Deciding Manager hearing the case will invite them in writing.

The Deciding Manager will notify the Trust's Executive Director of the meeting and invite them to provide advice if they wish.

### **Non-attendance at the Formal Meeting**

If the colleague or their companion is unavailable to attend, they may propose a new date, no more than **five working days** from the date of the original meeting.

If the colleague does not attend the Formal Meeting without good reason, it should be re-arranged but the colleague will be advised that if they do not attend the rearranged meeting, a decision may be made in their absence. They may submit a written statement to be taken into consideration.

Where a colleague is persistently unable, or unwilling, to attend the meeting, the Deciding Manager hearing the case should make a decision on the evidence available.

### **Non-attendance at Formal Meeting – due to Sickness Absence**

The Deciding Manager hearing the case and colleagues (and their companions) should make every effort to attend the meeting. The Deciding Manager hearing the case will respond sensitively when a delay is required, as it may arise for a reason related to a colleague's disability or an emergency involving dependants. Where a colleague cannot attend due to sickness, they must provide a note from their GP to certify their absence.

Where colleagues are absent due to sickness, the Managing Attendance at Work procedure applies, as normal. Where possible, another manager is identified as a contact in school, whilst the formal process is taking place.

As appropriate, arrangements are made for the colleague to see the Occupational Health Service as soon as possible, for assessment of their health generally and to ascertain whether, or not, they are fit to participate in these procedures. Under these arrangements, due regard is given to what is said by the Occupational Health Service and any information the colleague may wish to provide from their GP. Being absent from work due to sickness does not automatically stop the disciplinary procedure from progressing.

### **Conduct of the Formal Meeting**

The Deciding Manager hearing the case introduces those present and clarifies the roles. They explain the purpose of the meeting, how it will be conducted checking that the colleague received the documentation in advance of the meeting. The Deciding Manager hearing the case also checks that the colleague is aware of the potential outcomes of the meeting.

In relation to disciplinary or capability procedures, the Presenting Manager presents the allegations or poor performance issues and identifies the factual findings of any investigation. The colleague, or their companion, may ask questions of the Presenting Manager. The Deciding Manager asks questions to clarify any points.

For **grievance or appeal meetings** the Deciding Manager will ask the colleague, or companion, to identify grounds for raising a grievance or making an appeal.

The colleague (or their companion) then has the opportunity to state their case and present evidence, including calling of the witness, or witnesses, as appropriate. They are given the opportunity to ask questions to clarify points and may be asked questions by the Presenting Manager and the Deciding Manager.

At any point during the hearing, the colleague or their companion, may request an adjournment in order to consult with each other.

After questioning is completed, the Deciding Manager asks the colleague if there is anything further that they wish to add. Before adjourning the Formal Meeting, the Deciding Manager will invite the Presenting Manager, and then the colleague, to summarise the main points of the discussion.

The Formal Meeting is then adjourned. This is an opportunity for the Deciding Manager hearing the case to consider the facts, or instigate further investigation into the matter before coming to their decision.

The Specialist Adviser may remain to provide advice to the Deciding Manager.

### **Outcome**

The Deciding Manager hearing the case will either re-call the colleague to the meeting or write to the colleague confirming their decision and, as appropriate, their right of appeal. The outcome of the Formal Meeting will be confirmed in writing as soon as possible and, in any case, within **10 working days**.

### **Appeal Timescales**

Within 5 working days of written notification of formal action, the colleague must notify the Deciding Manager (Appeal) of their intention to appeal, including grounds, in accordance with the relevant formal procedure e.g. Disciplinary Procedure.

Colleagues will be given at least 10 working days' notice of the Appeal Meeting.

Colleagues must provide copies of any relevant evidence they intend to rely on, at least **3 working days** before the Appeal Meeting.

### **Appeal Meetings**

In the case of Appeal Meetings, the Formal Meeting process will apply, to include the following necessary changes.

The Presenting Manager (Appeal) will be the Deciding Manager (or representative from the committee) of the first Formal Meeting and may call the Presenting Manager from the Formal Meeting to act as a witness in the Appeal.

The Deciding Manager (Appeal) will be someone who has the appropriate level of authority but who has not previously been involved in the earlier decision and has the authority to overturn the decision made at the earlier meeting.

The Deciding Manager (Appeal) should pay particular attention to any new evidence that has been introduced, and ensure the colleague has the opportunity to comment on it.



### **Appeal Outcome**

The Deciding Manager (Appeal) hearing the case will either re-call the colleague to the meeting or write to the colleague, confirming their decision and, as appropriate, their right of appeal.

The outcome of the Appeal Meeting will be confirmed in writing as soon as possible and, in any case, within **10 working days**.

There is no further right of appeal.

## **Appendix 5 - Suspension Procedure**

Suspension is a 'neutral' act, in that it does not presume guilt or innocence. The decision to suspend a colleague from duty should not be taken lightly or without careful consideration of all the circumstances and the nature of the complaint or allegation made against them. Consideration should also be given to alternatives to suspension, such as temporary redeployment or alternative duties. This guidance applies to employees, referred to as colleagues.

If you are suspended, you will receive your normal pay, in line with your planned working arrangement.

The following list is not exhaustive, but provides an indication of the types of situation when suspension may be appropriate.

- Where gross misconduct is suspected or alleged.
- Where it would not be possible to carry out a thorough or impartial investigation with the colleague still at work.
- Where there is a concern that further instances of misconduct may occur.
- Where an employee's continued presence at work may put the individual or others at personal risk.

Whenever possible, an appropriate manager, in line with the school's decision-making structure, holds a meeting with the colleague to advise them of the decision to suspend from duty. If the colleague is not available and cannot be contacted by all reasonable enquiries, they are informed, in writing, not to attend work and to contact a named manager. A colleague can be suspended in the absence of a TU representative or work colleague.

If the appropriate manager considers that it would be appropriate to suspend a colleague, the manager must obtain appropriate authority to suspend, if they are not automatically authorised to make the decision (through the school's decision-making structure). The Executive Director of the Trust must be advised of the suspension.

In the absence of appropriate authorisation to suspend, where a line manager considers that a colleague is unable to carry out their duties, or that doing so would be inappropriate, they can send the colleague home until an appropriate person is available to provide the relevant authorisation.

When a colleague is suspended, they will be told:

- why they are being suspended from duty, and that this will be confirmed in writing;
- that suspension from duty is a neutral act and not a form of disciplinary action;

- to contact their TU representative (if they have one) or a work colleague, if they have not already done so;
- that they remain a colleague, and therefore are bound by their contract of employment;
- to remain contactable and available during normal working hours so that they can attend meetings, as required, and answer any work-related queries;
- to inform the school of any change in their contact details;
- to book any annual leave or report sickness absence in line with normal procedure;
- under no circumstances, to approach, or try to influence, anyone associated with the complaint/allegation against them about the complaint/allegation, or enter work premises without authorisation from the Investigating Manager. [Failure to comply may result in further disciplinary action being taken];
- that the suspension will be reviewed no fewer than every **15 working days** by the Manager who suspended them. They will not be suspended for any longer than is necessary, under the circumstances.

The colleague will also be informed of how to access counselling support and the name of someone in school who is designated to provide them with information and professional support during the process.

If, at any stage in the procedure, it appears that there is a significant medical factor involved, the colleague may be referred to the Occupational Health Service.

The suspension will end in one of the following ways:

- the Authorising Manager/Body decides that there is no case to answer and that the colleague does not need to attend a disciplinary hearing;
- that the allegations are less serious than originally thought, and a disciplinary hearing is not necessary; or
- through the completion of the disciplinary procedure, concluding with a disciplinary hearing.

The Governing Body must authorise the end of a suspension.

Where a suspension is lifted, a meeting is arranged to agree appropriate support for a colleague's return to work.