

# Disciplinary Policy

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| <b>Approval Body:</b>       | MST Board   |
| <b>Approval Date:</b>       | June 2020   |
| <b>Implementation Date:</b> | June 2020   |
| <b>Review Date:</b>         | October 2020 - Tower Hamlets are carrying out a substantial review of this policy over the summer. This will need to be reviewed again in line with this. |
| <b>Policy Version:</b>      | 3   |

Version Control

| Version | Reviewed  | Changes since last version  |
|---------|-----------|---|
| 1       | Existing  | <ul style="list-style-type: none"> <li>• Upon Conversion of the Trust agreed to adopt London Borough of Tower Hamlets Policy</li> </ul>   |
| 2       | June 2019 | <ul style="list-style-type: none"> <li>• Updated based on Tower Hamlets Changes</li> </ul>  |
| 3       | June 2020 | <ul style="list-style-type: none"> <li>• Minor wording changes. Added some clarity for policy and legislation. Added a new template for the investigation report (appendix 3) and amended the policy wording to accommodate.</li> </ul> |
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**Upon Conversion of the Trust agreed to adopt this London Borough of Tower Hamlets Policy**

**1. Introduction**

- 1.1 This policy applies to all employees (teaching and support staff) directly employed by the Mulberry Schools Trust (MST).
- 1.2 The Trust expects all its employees to recognise their obligations to their school, the public, pupils and other employees and to conduct themselves in a proper manner at all times. The Trust's general rules of conduct are listed in Appendix 1 below, they cover misconduct and gross misconduct but are neither exhaustive nor exclusive.

**2. Purpose**

- 2.1 To achieve efficiency of the organisation, quality of service provision and good employee relations, the Disciplinary Policy should:
- (i) improve conduct primarily by advice and correction rather than by disciplinary measures, recognising the Policy is a corrective rather than a punitive process;
  - (ii) provide a fair method of dealing with alleged breaches in standards of conduct;
  - (iii) ensure acceptable standards of conduct of work;
  - (iv) clarify the rights and responsibilities of management and employees under the Policy's provisions
- 2.2 If confirmed through the disciplinary process, substantiated allegations of gross misconduct may lead to summary dismissal or a determination to dismiss, i.e. there is no entitlement to statutory notice.
- 2.3 The Governing body is responsible for ensuring that fair, consistent and objective procedures exist for matters relating to staff discipline. The Headteacher / Principal is responsible for the internal organisation and management of the school.

**3. Informal Action**

- 3.1 In advance of formal disciplinary action, cases of less serious breaches of conduct (i.e. first breaches of some types of misconduct) can be dealt with informally by counselling the employee. In some cases, it may be beneficial to use external mediators to resolve conflict in the workplace.
- 3.2 This involves drawing to the employee's attention the unsatisfactory conduct, explaining what conduct is required and allowing a reasonable period for the employee's conduct/behaviour to improve.
- 3.3 Consideration should be given to any difficulties which a member of staff may be facing and a genuine attempt should be made to overcome them. Where considered appropriate, managers should seek advice from Occupational Health when managing staff who indicate signs of mental illness or who may be suffering from alcohol or substance abuse.

#### 4. Equality Considerations

- 4.1 It is important that the procedure is always applied in a fair manner and adheres to the Equality Act (2010). No employee shall be subject to discriminatory practice in the administration of the disciplinary procedure. The Trust actively opposes racism, sexism and all forms of discrimination against employees of any particular creed, ethnic or national origin, gender, age, disability, marital status, or sexual orientation.
- 4.2 A regular review of cases will be undertaken to determine whether employees from any particular group seem to be subject to disciplinary action more than members of other groups. This is in line with the Trust's commitment to monitoring equality and diversity.

#### 5. Disciplinary Sanctions

- 5.1 The following formal stages of disciplinary action can be taken for breaches of conduct (see Appendix 1 for Disciplinary Rules).
- 5.2 Warnings are progressive from First to Final except for:
- (i) cases of gross misconduct (which may result in summary dismissal);
  - (ii) cases which are less serious than gross misconduct but warrant a Final Warning being issued regardless of prior formal warnings.

| Disciplinary Action    | Authority to Issue      | Duration of Warning on Personal File |
|------------------------|-------------------------|--------------------------------------|
| First written warning  | Headteacher / Principal | 6 months-1 year                      |
| Second written warning | Headteacher / Principal | 12 months                            |
| Final warning          | Headteacher / Principal | 18 months                            |
| Dismissal              | Disciplinary Panel      | -                                    |

- 5.3 During the term of a disciplinary warning further misconduct may occur. Where this results in a formal hearing and a further warning is issued, the duration period for both warnings must expire before cancellation takes place. For example, where a second written warning is issued to an employee who has an outstanding first written warning, the period of the second warning (12 months) would be added to the remaining period of the first warning.
- 5.4 The total period would have to expire before cancellation of both warnings takes place. An employee must be held accountable for further misconduct if an existing warning is in force at the time the new alleged offence was committed, irrespective of when the offence comes to light or if the Hearing is arranged once the current warning(s) have expired.
- 5.5 Upon expiry, all disciplinary warnings will be removed from an employee's personnel file and destroyed. Records will be maintained by the Trust's HR team for monitoring purposes only.
- 5.6 An employee with a final written warning on file who is alleged to have committed a further occurrence of misconduct must be treated as if the allegation was of gross misconduct. This is

because if the allegation is substantiated, the employee would be dismissed. Therefore letters to the employee should include the warning of dismissal (as per allegations of gross misconduct).

### **Warnings without a Hearing**

- 5.7 Where the investigation entirely substantiates an allegation of misconduct, the employee (or their Trade Union representative) can formally request the issuing of a First Written Warning without the need for a Hearing. If the Headteacher / Principal agrees that the disciplinary sanction befits the allegation, a First Written Warning may be given that will remain on the employee's record for 6 months from the date it is issued.
- 5.8 It is only appropriate for issues which would warrant a first written warning. If the Headteacher / Principal judges that it is not a minor incident of misconduct, or if the employee has current warnings on file, the matter must be referred to a full Disciplinary Hearing.

## **6. Disciplinary Investigations**

### **The Investigating Officer**

- 6.1 The Headteacher / Principal is responsible for appointing an Investigating Officer. Where the Headteacher / Principal carries out the investigation any disciplinary hearing must be heard by a panel comprising of two governors (other than the chair of governors). It is envisaged that the Headteacher / Principal will only conduct the investigation in exceptional circumstances, and advice should be sought from the Director of HR beforehand.
- 6.2 Investigations should normally be carried out by the immediate line manager. If this is neither practical nor appropriate, another independent Investigating Officer should be chosen. Alternatives to the line manager could include an appropriately qualified consultant or the Director of HR or an employee of equal or more senior status within the Trust. Advice should be sought from the Director of HR on the appropriateness of the Investigating Officer.
- 6.3 Where an external investigation is required or desirable, the Chair of Governors is responsible for commissioning this.

### **The Investigation**

- 6.4 The case must be thoroughly investigated, clearly written and supported by evidence. Care must be taken not to allow assumptions or stereotypical attitudes to prejudice decisions.
- 6.5 The Investigating Officer will conduct an investigation into the alleged misconduct, with a view to obtaining evidence of innocence as well as guilt and to obtaining any evidence in mitigation. The Investigating Officer may appoint any other person to assist in the investigation.
- 6.6 The investigation may include a face to face interview with the employee but this is not mandatory. The employee may provide if they wish, a written statement or response to the Investigating Officer.
- 6.7 The employee is required to co-operate fully with the Investigation to ensure that the investigation can be completed as swiftly and as thoroughly as possible. If pupils are to be interviewed as part of the investigation the employee's union representative or a work colleague may attend to observe the interview to ensure impartiality. They may not ask questions. The Investigating Officer should

invite the pupil's parents to attend. This provision does not require an observer at any meeting where a disciplinary allegation is initially made by a pupil.

- 6.8 Any investigation involving school staff will be conducted within the working days for those staff and timetabling should therefore take into account school closure periods
- 6.9 The Investigating Officer will produce an Investigation Report in line with the template in Appendix 3. The Investigation report will determine if there is a case to answer.
- 6.10 The Investigation Report and its supporting documentation are confidential documents. If the decision is that there is a formal disciplinary meeting the employee will be sent the Investigation Report and all supporting documentation and witness statements. If the decision is that there shall not be a formal disciplinary meeting the Investigation Report and supporting documentation and witness statements shall not be disclosed.

### **Pre-Investigation Stage or Management Investigations**

In some limited cases it will be necessary to gather information regarding complaints, incidents and allegations before the start of a formal disciplinary investigation.

- 6.5 This type of information gathering is only appropriate for prima-facie serious allegations which are particularly sensitive or complex to determine whether:
- there is any substance to the complaint and a full disciplinary investigation is appropriate
  - the allegations warrant suspension of the employee
- 6.6 This is not a formal stage of the Code and would not be considered within the stipulated timescales of the Code but must be carried out as speedily as possible.
- 6.7 Any information uncovered at this stage would be provided to the investigating officer as appropriate.

### **Timescales for Investigations**

All allegations and complaints against employees must be investigated speedily (particularly in cases of potential gross misconduct). The Initiating Manager should ensure the Investigating Officer has reasonable time off from normal duties to ensure the investigation is concluded as soon as possible.

- 6.9 As a guide, from the time the Investigating Officer commences their investigation, the investigation report should be completed within 20 working days for all allegations of misconduct and other instances where the fact finding is relatively straightforward. For allegations of gross misconduct and more complex cases, the investigation process should take no longer than 30 working days (unless agreed in advance). Where an investigation is likely to be prolonged (through unexpected delays or school closure periods) all parties should be kept informed.
- 6.9 On completing the investigation and having consulted with the Director of HR, the Investigating Officer will recommend to the Initiating Manager, (normally the Headteacher) whether or not a formal disciplinary hearing is necessary and on what basis.

## Allegations against Headteachers / Principals

- 6.10 Where allegations of misconduct involve Headteachers / Principals, the Chair of the Local Governing Body, or other designated governor, replaces the Headteacher / Principal in initiating any action that may be taken.

The powers for suspension will rest with the Chair of the Trust Board. Investigations will be carried out by an officer of the Trust or independent investigator appointed by the Chair of the Trust Board.

## 7. Disciplinary Hearings

- 7.1 Where the results of the investigation indicate that there are reasonable grounds to suggest misconduct or gross misconduct, a Disciplinary Hearing should be arranged within **four working weeks** of completion of the investigation. Reasons for any delay in convening a Hearing must be communicated by the Initiating Manager to all interested parties.
- 7.2 In all cases where dismissal may result, HR shall attend the hearing in an advisory capacity. The CEO / Headteacher (or nominee) may also attend in an advisory capacity. Headteachers / Principals should contact the Trust's Director of HR whenever the possibility of such action arises.
- 7.3 The Investigating Officer's report and all relevant documentation should be sent with a letter notifying the employee of the date, time and place for the hearing giving **five** working days' notice of the hearing for misconduct cases and **ten** working days' notice for cases of gross misconduct (notice periods cover working days either side of holidays).
- 7.4 Where a meeting is repeatedly re-scheduled or if an employee is unable to attend for good reason, the employee may present a written submission to the Hearing or request that their chosen companion represents them at the hearing in their absence.

*\*Working days refers to actual school days.*

## Composition of the Panel

- 7.5 The Headteacher / Principal can personally hear allegations of misconduct. If this is neither practical nor appropriate, or where the allegations are of gross misconduct, or other misconduct which could result in the dismissal of the employee i.e. they already have a final warning on file, the Disciplinary Panel will hear the case.
- 7.6 The Disciplinary Panel will usually comprise of the Headteacher / Principal (who will chair the hearing) and one governor. Appeals against decisions made by the disciplinary panel must be considered by an Appeal Committee of the Trust Board, which consists of three Trustees, who have had no prior involvement in the case.
- 7.7 In cases of gross misconduct, the clerk to the governors must attend to take minutes of proceedings. It is their role to minute the significant points of the hearing and the decision of the panel but not to produce a verbatim record.

## 8. Conducting the Hearing

- 8.1 At the Hearing, all parties present will be given an opportunity to ask questions or challenge the reports/evidence submitted and all witnesses. (See Appendix 2 for the Disciplinary Hearing Structure).
- 8.2 The employee should be informed of the decision of the Disciplinary Hearing immediately (unless there is an adjournment to clarify any facts) and the Chairperson hearing the allegation will confirm this in writing within **five working days**. The letter must also confirm the individual's right of appeal.

## 9. Appeals Procedure

- 9.1 Employees have the right of Appeal against all formal disciplinary action. In submitting an appeal, employees are asking the Trust Board's Disciplinary Appeal Panel to consider the fairness and reasonableness of any disciplinary measures taken at the original Hearing.
- 9.2 Appeals against disciplinary action will only be considered on one or more of the following grounds:
- (a) the **PROCEDURE** – the grounds of appeal should detail how procedural irregularities prejudiced the disciplinary decision.
  - (b) the **FACTS** – the grounds of appeal should detail how the facts do not support the decision or were disregarded, misinterpreted or were considered not relevant. They should also detail any new evidence to be considered.
  - (c) the **DECISION** – the grounds of the appeal should state how the act(s) of misconduct did not justify the level of disciplinary action taken or the act was one of misconduct rather than gross misconduct.
- 9.3 Appeals must be registered with the Chair of the Trust Board within **ten working days** of the date of the letter confirming the disciplinary decision. Appeals received after this period will not be heard.
- 9.4 The Appeal will concentrate on the area(s) of dispute only and will not be a re-run of the whole disciplinary hearing. Accordingly, it is important that the employee (or their representative) is explicit about the grounds for appeal and must provide clear and specific reasons in writing. Such written notice of Appeal must include reference to any new facts the Appellant intends to raise at the Appeal.
- 9.5 Employees must present any new evidence which was unavailable at the time of submission of the appeal documentation at least **three working days** prior to the Appeal hearing so that management may have an opportunity to respond.

Appeals will be convened as soon as is reasonably practicable and the Appellant will be given **five working days'** notice of the time and venue of the Appeal hearing.

- 9.7 The result of the Appeal and the reasons for the decision will be conveyed to the Appellant immediately after the Hearing and will be confirmed in writing within **five working days** by the Chair of the Appeal Panel.

## 10. Employee Representation

- 10.1 A member of staff has a right to be accompanied by an accredited worker's companion (i.e. Trade Union representative) or a work colleague, at all formal stages of this procedure. They should be informed of this right, be given advanced notice of such meetings and given reasonable time to contact a representative. If the employee's chosen companion is not available at the time fixed for the meeting, it should be rescheduled to accommodate the availability of the companion, as long as a reasonable alternative date is offered which is within five working days of the originally proposed date.
- 10.2 Unless required to attend as a witness, people who are not in the employ of the Trust, agencies, groups, businesses or individuals which are not formally recognised through the Borough's employee relations process are excluded from participation in any part of the Disciplinary Policy. In particular, employees are precluded from being represented by solicitors or legal practitioners.
- 10.3 Employees are responsible for arranging their own representation. Employees may not be represented by a person who may prejudice the fairness of the disciplinary process or who may have a conflict of interest.
- 10.4 Where disciplinary allegations involve a trade union representative, no action should be taken until the circumstances of the case have been discussed with the Branch Secretary, Area Official or other senior trade union representative. In cases of alleged gross misconduct by a representative of a recognised professional association or trade union and where the branch secretary or full time official cannot be contacted quickly, the representative may be suspended on full pay until such consultations have taken place.

## 11. Suspension

- 11.1 Authority to suspend will commence at Headteacher / Principal level. In Trust schools both the Headteacher / Principal and the governing body have the right to suspend an employee (on full contractual pay) from all duties where in their opinion exclusion from the school is required.
- 11.2 Suspension for alleged misconduct should only be instigated:-
- where the suspected offence may amount to gross misconduct; or
  - in a situation when it is decided that a member of staff should be away from the school in the best interests of the investigation or the employee while a serious matter is being investigated.
- 11.3 Suspension of this kind is not a disciplinary sanction and does not imply "guilt" or that any decision has already been made. Suspension may involve a total suspension from work; suspension of part of the employee's normal duties; transfer to alternative work or transfer to a different workplace. The alternative options should be considered before implementing a total suspension from work. Wherever possible HR should be consulted before this action is taken.
- 11.4 If necessary, a less senior manager can send a member of staff home pending ratification by the Headteacher / Principal the following day.
- 11.5 If a union member, the local trade union representative can be asked to attend the suspension meeting where practicable. Where suspension occurs, this should be confirmed in writing giving broad details of the allegation. In all cases the Chair of Governors needs to be informed. If the

employee is not accompanied by a local rep, the regional Trade Union Official must be notified as soon as reasonably practicable following the suspension interview.

- 11.6 Suspensions are a precautionary measure and should not be regarded as prejudging the matter. If at any stage during or at the end of the investigation, or at any stage of the disciplinary procedure, it is considered that this suspension should be lifted, the employee will be informed immediately.
- 11.7 Suspension from duty is a 'working arrangement' whereby the employee must not enter any Trust building or contact any Trust employee without the express permission of their Headteacher / Principal or the Investigating Officer. Nor must a suspended employee contact service users with whom they would come into contact during the course of your duties. Failure to observe this requirement may render them liable to further disciplinary action.

## **12. Child Protection Legislation**

- 12.1 If allegations are made against staff which involve child protection issues, the Child Protection and Safeguarding Policy must be followed irrespective of how the allegation arises. Employees will be suspended pending the outcome of the Child Protection and Safeguarding Strategy Meeting. If the relevant child protection agencies decide not to pursue formal action against the employee, the matter will be referred back to the school for consideration under the appropriate procedure.
- 12.2 Only once the matter has been referred back to the school will action under the appropriate procedure commence. The fact that external agencies have not pursued formal action should not be taken as a presumption of innocence or guilt on behalf of the employee.

## APPENDIX 1

### STANDARDS OF CONDUCT AND DISCIPLINARY RULES

#### GROSS MISCONDUCT

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

- (i) Defrauding or stealing from the School/Trust, its partners, members of the public, employees or any other person or organisation with whom the employee comes into contact with in the course of employment. Examples include: falsification for financial gain of any document such as timesheets, invoices, receipts, accounts, overtime claims, application forms; falsification of qualifications which are a stated requirement of employment or which result in financial gain.
- (ii) Attempting to steal or defraud and colluding with other parties to steal or defraud, or unauthorised use of or wilful damage to School/Trust property will also be considered as gross misconduct.
- (iii) Corrupt or improper practices. Examples include: improper use of official position for personal and/or financial advantage, or for the private advantage of some other person or organisation; failing to disclose private interests which conflict with the Trust’s interests.
- (iv) Engaging in unauthorised employment or business during hours when contracted to work for the School/Trust e.g. when on sick leave, study leave or suspension.
- (v) Serious acts of discrimination, victimisation, bullying and/or harassment of any individual or group.
- (vi) Prolonged unauthorised absence from work (at least ten working days without contact).
- (vii) Inappropriate conduct towards or contact with pupils.
- (viii) Maltreatment, abuse or wilful neglect of those in care, or whose personal welfare is otherwise the responsibility of the Trust.
- (ix) Serious sexual offences and/or misconduct at work.
- (x) Serious breach of health and safety which endangers any individual e.g. damage to, misappropriation of, or neglect of safety equipment.
- (xi) Wilful unauthorised disclosure of confidential information or data e.g. disclosure of sensitive personal information or commercially valuable information.
- (xii) Failure to report or record any matter which it is the employee’s contractual duty (either expressed or implied) to report.
- (xiii) Fighting or acts of violence at the work place, serious threatening or abusive behaviour towards staff, Trust colleagues, pupils, governors and members of the public.

- (xiv) Criminal offences outside work (including fraudulent activities such as claiming Housing Benefit or unemployment benefit etc) which may affect the individual's employment suitability.
- (xv) Being incapable of adequately performing duties as a result of the abuse of alcohol or drugs.
- (xvi) Serious contravention of the E-Safety and Acceptable Use of ICT Policy. Employees must not use electronic mail, the Intranet or Internet to deliberately access internet sites containing pornographic, racist, offensive or obscene material or to use these to generally harass or threaten fellow employees or others.
- (xvii) Deliberate and wilful negligence in job performance, likely to damage the School/Trust's reputation or have serious implications for service users or colleagues.
- (xviii) Gross negligence, incapability or incompetence, including serious professional misjudgement, which destroys the confidence in the employee e.g. failing to supervise a contract which leads to serious financial loss to the School/Trust
- (xix) Obtaining a job by lies or deception in the course of selection procedures.
- (xx) Repeated acts or a pattern of behaviour that destroys the confidence in the employment relationship.
- (xxi) Making false claims under any of the School/Trust's policies and procedures.
- (xxii) Exam malpractice.

#### **OTHER MISCONDUCT**

- (i) Regular lateness for work
- (ii) Regular failure to follow employment rules e.g. reporting absence
- (iii) Refusal to obey a reasonable instruction of the Supervisor
- (iv) Negligence at work leading to loss, damage or wastage of school/Trust or public property
- (v) Discrimination/harassment against a member of the public, Trust employee or Trust student on the grounds of sex, colour, creed, nationality, ethnic origin, age, sexual orientation or disability
- (vi) Improper, disorderly or unacceptable conduct at, during or when arriving for work.
- (vii) Inappropriate drinking of alcohol at work
- (viii) Wilfully inadequate work performance (poor performance or lack of capability will normally be the subject of Capability procedure)
- (ix) Abusive or threatening behaviour towards a member of the public, clients, fellow employees or trustees
- (x) Breaches of the Trust's Standing Orders and Financial Regulations

- (x) Neglect of duty e.g. where an employee without good cause fails to discharge the obligations placed on them by their contract of employment; or by carelessness or neglect causes any loss, damage or injury to occur to any person or property; or fails to report any matter it is his or her duty to report.
- (xi) Knowingly making false, misleading or inaccurate oral or written statements to the Trust or other employees or members of the public.
- (xii) Disregard of the safety rules which have previously been brought to the employee's attention.
- (xiii) Engaging in other businesses without the required consent of the Headteacher
- (xiv) Failure to notify the Headteacher of any gift, benefit, hospitality or other advantages in breach of the Trust's policy.
- (xv) Improper use of the school's e-mail, internet and telecommunications.
- (xvi) Damage to or unauthorised use of Trust property.
- (xvii) Smoking in no smoking areas.
- (xviii) Persistently failing to follow to the School's Acceptable Standards of Appearance.
- (xix) Persistently failing to display School's identification when at work.

## Disciplinary Hearing Structure (Potential Dismissal)

