



DISCIPLINARY AT WORK POLICY & PROCEDURE

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SHARE MAT STAFF DISCIPLINARY AT WORK POLICY & PROCEDURE

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1. Policy statement

- 1.1 The main purpose of the Disciplinary Policy and Procedure is to encourage an employee whose standard of work or conduct is unsatisfactory to improve. The procedure serves to ensure that this is done in a fair and consistent manner.
- 1.2 The Disciplinary Policy and Procedure is not contractual and may be varied by the trust.

2. Scope

- 2.1 These procedures apply to all employees in the trust. Nothing in these procedures is intended to contravene the statutory rights, duties and obligations of headteachers, executive principals, CEO and the board of directors.
- 2.2 The purpose is to ensure that a fair and consistent procedure is applied to all employees, having regard to the nature of their employment, when allegations of misconduct are investigated, and similarly to ensure that fair and consistent action is taken as promptly as possible in response to any breaches of discipline.
- 2.3 The disciplinary procedures should not be thought of simply as a means of imposing sanctions or as necessarily leading to dismissal. The intention of the policy and procedures is that they should encourage all employees to achieve and maintain high standards of conduct.

3. Legal and statutory framework

- 3.1 The trust is the data controller for any personal and/or sensitive data provided as part of this policy unless otherwise stated. The information you provide will be held securely by us and/or our data processors whether the information is in electronic or physical format, in line with trust Privacy Notices and GDPR Policy and Procedure. If you have any queries regarding how we handle your information or this policy, please contact Jayne.newson@sharemat.co.uk.
- 3.2 The disciplinary procedure is strictly confidential and all aspects including all documentation and records shall be treated as such.

4. Roles and responsibilities

- 4.1 In the case of academy staff or central staff, the disciplinary officer will be a headteacher or executive leader or central leader. The appeal will be to a panel of executive leaders (not including the disciplinary officer).
- 4.2 In the case of the academy principal/headteacher, the disciplinary officer will be the executive headteacher and/or a more senior manager. The appeal will be to a panel, to include the CEO (when not disciplinary officer) and /or another SHARE MAT senior executive leader.

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- 4.3 For allegations regarding the Chief Executive, a nominated Director will have the authority to be the disciplinary officer and any appeal will be heard by a panel of directors.
- 4.4 In a case where the person who would normally be the disciplinary officer is compromised through existing circumstances or, will need to investigate the matter/be significantly involved in the investigation or, does not have the resource to deal with the matter at that time – the case will normally be dealt with by an alternative at the same level or the next level of management. (i.e. another Deputy Headteacher or Headteacher or Executive Leader within the trust.
- 4.5 Central trust officers may also be requested to lead investigations, reporting to the headteacher and/or CEO.
- 4.6 In cases where the CEO is compromised, the matter will be discussed with the Chair of Directors to determine the way forward.

5. Representation at disciplinary hearings

- 5.1 Employees have a statutory right to be accompanied at disciplinary hearings by a recognised trade union representative or work colleague.
- 5.2 An employee may not be represented in such hearings by a person who has a conflict of interest.
- 5.3 The representative or companion cannot be prevented from presenting and summing up the employee's case. They do not, however, have the right either to answer questions on the employee's behalf or to prevent the employer from presenting their case.

6. Suspension

- 6.1 An employee may be suspended from duty where it is considered unsuitable for them to remain at work. This may include circumstances where their absence is necessary to enable appropriate investigation to be undertaken, or where the presence of that individual might otherwise undermine the investigation or put the trust or any student or staff member at risk.
- 6.2 Suspension is a neutral act and the duration of suspension ideally should be kept as short as possible.
- 6.3 Suspension should only be imposed after due consideration of the facts and after an initial fact find has taken place. It should be reviewed at regular intervals to ensure it is not unnecessarily protracted. The period of suspension should always be kept to a minimum.
- 6.4 The employee must be notified of their suspension in writing, explaining the reasons and the conditions attached.
- 6.5 The decision to suspend may only be taken by a headteacher or executive leader. The CEO alone has the power to suspend a headteacher and must notify

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the full board of directors. The chair of directors alone has the power to suspend the CEO and must notify the full board of directors and members. In other cases, the trust board should be informed through the executive leaders.

- 6.6 While the employee is suspended, they should not visit the site or contact any of its students, parents, governors, directors, members or colleagues, unless the employee has been authorised to do so by the headteacher/executive leader.
- 6.7 Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. The employee will continue to receive their salary during the period of suspension.

7. Allegations of abuse made against staff

- 7.1 In the event of the trust becoming aware of any allegations of a serious safeguarding nature, such as child abuse, being made against a member of staff (whether initially reported internally or externally) advice should be sought directly (in line with 'Keeping Children Safe in Education') from the Designated Safeguarding Lead who may in turn contact the Local Authority Designated Officer (or LADO) and/or the police.
- 7.2 The Local Authority Designated Officer (or LADO) and/or the police may deem it necessary to arrange for a multi-agency strategy meeting to be held or at the very least a discussion with, if applicable, the child's case manager before an investigation is undertaken or disciplinary process, if indicated in relation to a member of staff, is initiated.
- 7.3 Such a meeting or discussion will clarify the precise nature, content and context of the allegation before determining the appropriate course of management. Sharing information in this way is vital to ensure that the correct action is taken. Additional reference should be made to the trust's Safeguarding Policy & Procedure.

8. Alleged criminal offences

- 8.1 The decision to initiate disciplinary action in criminal cases is a matter for the trust. While this may involve waiting for the outcome of external proceedings before going ahead, there is no obligation on the academy to do so.
- 8.2 Before proceeding to dismissal (after due process) the academy must have a reasonable belief in an employee's guilt and must have carried out its own investigation. In other words, relying solely on evidence from a police investigation is not usually sufficient.

9. Referrals to Teacher Regulation Agency (TRA) and Disclosure and Barring Service (DBS)

- 9.1 Where an employee in a teaching role has been dismissed for misconduct or where dismissal would have been the likely outcome had they not resigned before the disciplinary process was completed, the headteacher in consultation with executive leaders should consider whether there is a requirement to refer

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the individual to the Teaching Regulation Agency (TRA). A referral to this body is appropriate if the alleged misconduct is so serious that it warrants a decision on whether the teacher should be prevented from teaching.

- 9.2 In respect of disciplinary action relating to serious safeguarding issues involving either the risk of harm, or actual harm, to a child, employees, whether teachers or support staff, should be referred to the Disclosure and Barring Service (DBS) and in the case of teachers, the employee may additionally be referred to the TRA in accordance with the preceding clause.

10. Overlapping disciplinary and grievance cases

- 10.1 If a grievance is raised by an employee after disciplinary proceedings against them have commenced, and the grievance relates to the disciplinary case (unrelated cases can proceed in parallel), a decision will be taken either to suspend the grievance until after the disciplinary issue has been dealt with or to hear the grievance at the disciplinary hearing.
- 10.2 Only in exceptional circumstances will a disciplinary hearing be suspended to deal with a grievance that has been raised after disciplinary process has commenced.
- 10.3 Depending upon the nature of the grievance, the trust/academy may need to consider bringing in another manager to continue to hear the disciplinary case.
- 10.4 It is advisable that an executive leader is present at all formal disciplinary and/or grievance hearings to support management and/or directors as appropriate.

11. Sickness absence and disciplinary process

- 11.1 If an employee is unable to attend a disciplinary hearing due to sickness absence, it is prudent to ascertain when they are likely to return and to consider postponing and rearranging the hearing if this is within the foreseeable future.
- 11.2 If sickness absence appears likely to be either medium (more than two weeks) or longer, the employer should make a referral to occupational health or seek a medical opinion from the employee's GP. If the employee is not well enough to take part in the proceedings, their absence should continue to be managed in accordance with the trust's Attendance Management policy & Procedure.
- 11.3 If medical opinion is that the employee is well enough to attend the disciplinary hearing, the disciplinary process should be continued subject to any conditions set out by the medical professional.
- 11.4 If the employee is unable to attend, they can be asked to submit a response in writing for consideration by the chair/panel and/or their nominated representative may present their case on their behalf.

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12. Disciplinary procedure – informal stage

- 12.1 If an investigation has revealed a minor breach of discipline, it is possible for the employee to be issued with a management instruction without recourse to a formal disciplinary hearing.
- 12.2 The management instruction is in writing and kept on file. It records the reasons for the instruction being issued, the standards expected of the employee and any relevant assistance or training to be provided.
- 12.3 The management instruction warning will also state that if there are any further acts of misconduct, formal disciplinary action will be instigated.

13. Investigations

- 13.1 The purpose of an investigation is for the trust to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case and will be completed as soon as practically possible. It may involve interviewing and taking statements from the employee and any relevant witnesses, and/or reviewing relevant documents.
- 13.2 Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.
- 13.3 An employee does not have the right to bring a companion to an investigative interview. However, the trust may in its absolute discretion allow an employee to bring a companion if it helps the employee to overcome a disability or in exceptional circumstances.
- 13.4 The employee must co-operate fully and promptly in any investigation. This will include informing the trust of the names of any relevant witnesses, disclosing any relevant documents to the trust and attending investigative interviews if required. A failure to comply may lead to disciplinary action.
- 13.5 It is incumbent on the employee, during the investigation stage, to raise details of additional witnesses whom the trust should interview during the investigation.
- 13.6 An investigation report will be generated by the investigating officer and then sent to the person who commissioned the investigation. This is when the headteacher/executive leader, based on the report and supporting appendices, will decide if a hearing is necessary.

14. Formal disciplinary hearing

- 14.1 The disciplinary hearing will be conducted in accordance with Appendix 1 of this policy.

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- 14.2 The case will normally be heard by a headteacher/executive leader of a higher level of seniority or a panel including one of these postholders. As a guide, a gross misconduct case will usually be heard by a panel.
- 14.3 No person who has had previous involvement in the case may sit on the disciplinary panel.

15. Levels of disciplinary action

- 15.1 Having considered all relevant material the panel/hearing officer must determine whether the management case is proven. If they are not satisfied that this is the case, then the employee should be informed that there is no case to answer and accordingly the matter is closed.
- 15.2 If the case is found proven the panel/hearing officer should then consider whether a sanction is warranted and, if so, must consider the appropriate level of sanction.
- 15.3 Outcome options available include:
- a) No further action
 - b) first written warning - on file for up to 6 months
 - c) final written warning - may remain in force for 12 months*
 - d) demotion as an agreed alternative to dismissal **
 - e) dismissal
 - f) summary dismissal (only for gross misconduct***).

*A final written warning may, depending on the seriousness of the case, be issued even if no previous disciplinary action has been taken.

**Demotion, normally accompanied by a final written warning, can only be affected, by means of a variation to contract, with the agreement of the individual concerned and accordingly there can be no appeal against demotion – only against the initial decision to dismiss.

***Gross misconduct is conduct of such nature that the employer cannot reasonably continue to allow the employee to remain at their place of work. Examples of behaviour which might constitute gross misconduct are provided in Appendix 2.

- 15.4 When deciding upon a sanction the following circumstances should always be considered:
- a) the seriousness of the offence
 - b) whether the offence was repeated (live warning on file)
 - c) whether there are mitigating circumstances
 - d) the employment record of the employee concerned.
- 15.5 It is recommended in all instances that the panel/hearing officer is provided with HR advice in relation to determining an appropriate level of sanction.

16. Guidance on outcomes

16.1 Any written outcome must specify the following:

- the level of the warning (first or final)
- the nature of the unsatisfactory conduct
- the change in behaviour required (with appropriate timescales)
- how long the outcome will remain current
- information on the consequences of repeated misconduct (i.e. when a final warning is issued this must make clear that any further misconduct may result in dismissal)
- provision of relevant support, further training and guidance
- the employee's right of appeal (and in relation to this must make clear both the time limit for submission of an appeal and the provision that any submission must identify the specific grounds on which the appeal is based).

17. Formal communication of outcome

17.1 A formal outcome letter, stating the findings of the panel and detailing any sanction deemed appropriate, must be sent to the employee, even if the decision of the panel has been communicated to the employee at the conclusion of the hearing.

17.2 The outcome letter should be sent as soon as possible, but in all cases the employee should receive formal notification of the outcome within five working days of the disciplinary hearing.

17.3 If the outcome of the disciplinary hearing is dismissal the outcome letter must be sent by recorded delivery, and the content of the letter must ensure that the employee is informed clearly both as to the reason(s) for their dismissal and the date of termination of their employment which is the date the letter is sent to the employee and not the date of the hearing.

17.4 The outcome letter must, in all cases, advise the employee of the right of appeal against any formal disciplinary sanction, and must also specify to whom an appeal (in writing) should be addressed (see 'appeal process' below).

18. Appeal process

18.1 An employee is entitled to appeal against a formal disciplinary sanction.

18.2 Any appeal must be lodged in writing to share.hr@sharemat.co.uk within ten working days of receiving written notification of the disciplinary outcome. The written appeal must identify the specific grounds for appeal.

18.3 The appeal hearing will not be a re-hearing of the original allegation(s) unless the appeal is in relation to procedural issues. The appeal hearing will only focus on the grounds for appeal, for instance, new evidence, but only if this evidence was not available at the time of the initial disciplinary hearing, or undue severity or inconsistency of the penalty.

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- 18.4 A separate appeals panel/appeal officer must be established in line with the Scheme of Delegation to consider any appeal that may be submitted. An appeal body must have no fewer members than the number who constituted the panel for the original hearing. Panel/appeal officers' members must not have had any involvement in either the original hearing or in any matters pertaining to the disciplinary process.
- 18.5 The appeal will usually be heard by an executive leader or a panel of senior trust leaders not previously involved in the case. The panel will consist of postholders who are more senior, or at least equal to the employee.
- 18.6 The appeal process should not result in any increase in the level of sanction.

19. Appeal hearing procedure

- 19.1 The employee must be given five working days' notice of the date, time and venue of the appeal hearing. A letter should be sent to all relevant parties informing them of these details.
- 19.2 The date of the appeal hearing may be rearranged within five working days of the original date set, if requested by the employee or their union representative for a valid reason.
- 19.3 Following introductions and the explanation of the purpose of the hearing and how it will be conducted, the employee and their representative or companion are invited to present their grounds for appeal. Where the specific grounds for appeal are unclear, the panel may ask for clarification.
- 19.4 The chair of the original disciplinary hearing will then present the reasons for the decision taken at that time and may call as a witness the individual who presented the management case to the original disciplinary panel. If a full re-hearing is required the chair from the previous hearing will not be in attendance.
- 19.5 Once all relevant material has been thoroughly explored by the panel/appeal officer they will deliberate before making a determination, which will then be conveyed by the chair. This will be either to overturn a previous decision or to reject the appeal.
- 19.6 The decision of the appeal panel/appeal officer will normally be communicated verbally before the hearing is closed, although in certain circumstances it may be appropriate to defer judgement pending further consideration.
- 19.7 In all cases, the member of staff will be informed of the outcome of the appeal hearing in writing within five working days of the date of the appeal hearing.
- 19.8 The decision of the appeal panel is final. There is no further level of appeal.

20. Equality and diversity statement

- 20.1 Share MAT is committed to promoting a working environment based on dignity, trust and respect, free from discrimination, harassment and victimisation. This

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disciplinary policy will be applied fairly and consistently to all employees regardless of protected characteristics. We will make reasonable adjustments to this process if required to ensure no employee is disadvantaged.

21. Linked policies

21.1 This policy will be supported by the following policies and procedures:

- Attendance Management Policy & Procedure
- Capability Policy & Procedure
- Grievance Policy & Procedure
- Safeguarding Policy & Procedure
- Scheme of Delegation

22. Schedule of Amendment

Version No	Amendment

Appendix 1: Flowchart – Formal Disciplinary Hearing

Executive principal or headteacher (or chair of the disciplinary panel, where appropriate)

- Makes introductions of everyone at the hearing describing their various roles
- Describes reason for the hearing
- Explains the procedure to follow at the hearing
- Informs the employee or representative of their right to ask for an adjournment at any time during the hearing.

Academy representative (either a senior staff member or the headteacher)

- Presents disciplinary case and the evidence to be considered
- Is questioned by defendant and/or representative, and the panel members
- Presents witnesses, if appropriate, for separate questioning by defendant and/or representative and also by chair, etc.
- Takes questions on evidence from the chair and panel members.

Defendant (employee or representative)

- Presents defence case
- Is questioned by school representative
- Is questioned by the panel members
- Presents witnesses (if appropriate) for separate questioning, by school representative and chair, etc.

Executive principal or headteacher (or chair of disciplinary panel, where appropriate)

- Decides that all material evidence has been presented
- Informs both parties of their right to an adjournment before summing up.

Academy representative

- Sums up their case.

Defendant (employee or representative)

- Sums up their case.

Executive principal or headteacher (or chair of the disciplinary panel, where appropriate)

- Asks both parties and their representatives, advisers, etc. to leave the room
- Decides on course of action/sanction, taking advice from HR (as appropriate)
- If decision can be conveyed without further delay, calls both parties, etc. back into the room and informs them of decision reached, or undertakes to inform defendant of the outcome in writing within a reasonable timescale
- Confirms the decision in writing as soon as possible.

Appendix 2: Examples of Gross Misconduct

The following list gives examples of behaviour that may be regarded as serious disciplinary breaches or completely unacceptable misconduct. The specific circumstances of each case should be carefully considered. These examples are neither exhaustive nor exclusive.

- Serious or persistent failure to comply with the trust's safeguarding policy.
- Serious or persistent failure to comply with the trust's recognised policies and procedures.
- Unauthorised removal of property, or stealing from the trust/school, its pupils, members of staff or the public and other offences of dishonesty.
- Fraud and corruption, deliberate falsification of records.
- Sexual offences including offences against children and young people, abuse of trust, grooming, accessing or downloading or sending obscene, indecent or offensive images or statements.
- Child abuse.
- Sexual misconduct at work.
- Inappropriate use of social media (e.g., damage to the reputation of the organisation).
- Fighting, physical assault, violent and/or intimidating conduct.
- Falsification of subsistence and expenses claims etc.
- Falsification of qualifications which are a stated requirement of employment or which result in financial gain.
- Malicious or deliberate damage to the trust/school's property.
- Serious breach of health and safety or breaches of safety regulations endangering other people, including deliberate damage to, neglect or misappropriation of safety equipment.
- The persistent and wilful refusal to carry out a reasonable instruction despite warnings of the consequences of continued refusal.
- The commission of a serious breach of duty prejudicial to the school's relations with members of the public or other outside contracts or any wilful attempt to damage the standing or position of the school.
- Serious acts of unlawful discrimination against other employees, pupils or members of the public in the course of duty; or serious or persistent sexual or racial harassment, victimisation or bullying.
- Serious breach of school's sickness absence reporting system: undertaking paid work during hours whilst reporting sick.
- Serious misuse of the internet/contravention of the trust's ICT policy (such as for the purposes of running a business) including unauthorised entry to computer records.
- A serious breach of the normal trust and confidence, which should exist between employee and employer, bringing the trust into serious disrepute.
- Serious negligence that causes unacceptable loss, damage or injury.
- Serious act of insubordination.
- Continued and repeated offences of misconduct.
- Serious incapability through alcohol or being under the influence of illegal drugs. There may be other offences of a similar gravity which could constitute gross misconduct.

Acts of gross misconduct may lead to suspension while the alleged offence is investigated. The procedures to be followed in cases of gross misconduct are the same

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as those described for misconduct but may proceed directly to a hearing with consideration of a dismissal decision by the executive principal or headteacher or the disciplinary panel in accordance with the Scheme of Delegation.

If, upon completion of the investigation and hearing, the executive principal or headteacher or the chair of the disciplinary panel is satisfied that gross misconduct has occurred, the result may be summary dismissal without either notice or payment in lieu of notice. However, in such a case, a right of appeal to an appeal panel, in accordance with the Scheme of Delegation, against the initial decision still stands.