



# Disciplinary Procedure Relating to Misconduct For All Employees



## The Stour Federation

## 1. TERMS OF REFERENCE

For all employees employed by The Stour Federation Trust Board

### Definitions

**Headteacher** also refers to any other title used to identify the Headteacher where appropriate.

**Employee** refers to any employee, teaching and support, employed to work at the School.

**Senior Manager** refers to [insert definition] delegated by the Headteacher to deal with a disciplinary matter under this procedure. The senior manager may only make a decision to issue up to and including a final written warning.

**Investigating Officer** refers to a senior manager or an external person appointed by the Headteacher.

**Companion** refers to a person chosen by the employee to accompany them, who shall be a trade union representative or a workplace colleague.

**Governors Disciplinary Committee** may be convened to deal with a case where the Headteacher considers that they must act in the role of the senior manager. In this event, substitute Headteacher with 'Governors Disciplinary Committee' throughout the procedure.

**Governors Appeal Committee** may be convened to hear an appeal against a written warning or dismissal. Where possible the number of governors on the committee will be equal to, or greater than, the decision-maker/s of the case being appealed.

## 2. INTRODUCTION

This Disciplinary Procedure is designed to help and encourage all employees to achieve and maintain standards of conduct. The aim is to ensure consistent and fair treatment for all in the organisation.

Examples of the type of conduct that is considered to be misconduct or gross misconduct, which could lead to action under this Disciplinary Procedure, are set out in the Disciplinary Rules which apply to all employees and should be read in conjunction with this procedure.

This procedure is non-contractual and for guidance only. This procedure applies to all employees. It does not apply to agency workers or contractors.

This procedure does not apply during the probation period. If issues of conduct arise, the probation procedure will normally be used to address such matters. Where allegations have been made against a probationer, a management investigation will be conducted.

This procedure may be implemented at any stage, as set out below, taking into account the alleged misconduct of an employee. Employees will not normally be dismissed for a first act of misconduct unless it is decided that it amounts to gross misconduct.

In cases against the Headteacher, the Local Academy Council Chair or a Committee of Governors has the power to discipline the Headteacher in accordance with the procedure set out below. The Headteacher would only be dismissed by the Trust Board following discussions with the Local Academy Council.

In cases against the CEO, the Trust Board has the power to discipline or dismiss the CEO in accordance with the procedure set out below.

This procedure is written in line with the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice.

Parties with responsibility for implementing any stages of this procedure will receive appropriate training and access to professional HR advice.

Any personal data processed under this policy will be handled in accordance with the Trust's Data Protection Policy and Staff Privacy Notice.

### **3. EQUALITY AND DIVERSITY**

The procedure will be operated in accordance with the School's Equality and Diversity Policy. The School is committed to developing, maintaining and supporting a culture of equality and diversity in employment. The impact of the procedure will be monitored in accordance with the Equality Act 2010.

Employees have the right to request reasonable adjustments at any stage of the procedure to support disability or language needs. Such adjustments will be considered and, where reasonable, implemented in line with our obligations under the Equality Act 2010.

## **PART A - INFORMAL PROCEDURE**

### **4. INFORMAL ACTION**

Managers should seek to resolve minor misconduct informally and as soon as it occurs. If it is deemed appropriate following initial fact-finding management advice may be given to the employee by a senior manager or a line manager. Action will be taken under the formal procedure set out in Part B below if the matter is not resolved or, there is repeated minor misconduct or, where informal action is not appropriate (for example, because of the seriousness of the allegation).

There is no appeal against management advice given.

The written memorandum will set out the misconduct, the improvement that is required and, if appropriate, how this will be reviewed and during what timeframe. The employee may make a written comment on the memorandum if they have any objection to the informal action taken. A copy of the memorandum or a note of any informal discussions may be placed on the employee's personnel file.

## **PART B - FORMAL PROCEDURE**

### **5. DISCIPLINARY INVESTIGATION**

If it is deemed necessary to formally investigate allegations of misconduct or gross misconduct under Part B of this procedure, the Senior Manager will appoint an Investigating Officer to undertake an independent investigation. At this stage the employee will be informed of the allegations against them.

The Investigating Officer should, wherever possible, have no prior knowledge of the allegations and should ensure that their investigation is free from any bias.

The Investigating Officer will meet with the employee subject of the allegations, giving them 5 days' notice of the investigation meeting.

The Investigating Officer may also meet with witnesses and gather other information pertinent to the investigation, such as, policies and procedures, CCTV evidence and training records.

A record will be taken of any investigation and witness meetings, parties will be asked to review and sign the minutes, and they will form part of a bundle of evidence should the matter be referred to a formal disciplinary hearing.

The Investigating Officer will produce a summary of their findings which will include a recommendation of whether the case should be referred to a disciplinary hearing.

### **6. DISCIPLINARY HEARING**

If following an appropriate investigation by the Investigating Officer, the senior manager considers on the facts that formal disciplinary action for misconduct is necessary, they will write to the employee as soon as practicably possible and at least 5 working days in advance to inform them of the disciplinary hearing. The written notice will include:

- A. The date, time and place of the disciplinary hearing.
- B. The allegation/s and their possible consequences.
- C. The employee's right to be accompanied by their companion.
- D. Copies of, or access to, all documents and evidence to be relied upon at the hearing, or a list of enclosed documents where already provided.
- E. The names of any witnesses to be called by the senior manager.
- F. The employee's right to call witnesses on their behalf.
- G. The name and position of any HR adviser who will accompany the senior manager at the hearing.
- H. The name and position of any note taker.

At the employee's request, an extra copy of this notice, together with any enclosures, should be provided for their companion.

The employee must advise the senior manager of the following at least three working days in advance of the hearing:

- A. The name and designation of their companion.
- B. Provide any written documentation to be considered.
- C. The names of any witnesses that they wish to call.
- D. Any special requirements (e.g. disability, language requirements).

At the disciplinary hearing, before the senior manager and their HR Adviser, the employee (and their companion) will be given a reasonable opportunity to state their case, to question the Investigating Officer where possible and any witnesses, to call any witnesses, and to raise points in response to any information or evidence presented.

Following the hearing, the senior manager will consider the matter and confirm the decision in writing to the employee and their companion as soon as possible and usually within five working days of the hearing, to include:

- A. The sanction (if any) and the period this will remain current.
- B. The reasons for their decision.
- C. The change in behaviour required (if relevant) and the likely consequences of further misconduct.
- D. Right of appeal.

## **7. FORMAL DISCIPLINARY ACTION**

### **First Written Warning**

The senior manager may give the employee a first written warning, which will include a statement that any further complaint of misconduct occurring within the next 12 months that is found justified after a disciplinary hearing, will lead to a final warning unless there are mitigating circumstances.

### **Final Written Warning**

If a further complaint is made about the employee's conduct before the first written warning has expired, the same procedure (as in 6 above) will be followed.

The senior manager may give the employee a final written warning, which will include a statement that any further complaint of misconduct occurring within the next 12 months that is found justified after a disciplinary hearing, will lead to dismissal unless there are mitigating circumstances.

### **Recommendations**

Alongside determining whether a disciplinary sanction is appropriate, the senior manager may, depending on the circumstances of the case, also consider making recommendations.

Recommendations may include;

- Additional learning, development or training to address identified areas for improvement.
- Access to relevant health and wellbeing support.
- Implementation of broader preventative actions, aimed at improving systems, reducing risk and promoting a positive working environment.

### **Dismissal**

If a further complaint is received before the final written warning has expired, the complaint will be referred to a hearing before the Headteacher (in consultation with the CEO) following the same

procedure as in paragraph 6 above. The Headteacher may be accompanied by an HR Adviser.

If the Headteacher (in consultation with the CEO) decides the complaint is justified, they may decide to dismiss the employee. The Headteacher will state the decision, the reasons and inform the employee of their right to appeal to a Governors Appeal Committee. They will confirm the decision and right of appeal in writing to the employee (and their companion) as soon as possible and normally within five working days of the hearing. The Headteacher will record the outcome of their considerations and the names of persons present at the hearing.

## **8. GROSS MISCONDUCT**

If the complaint is considered so serious that it may amount to gross misconduct, justifying dismissal without previous warning and without notice (see Disciplinary Rules), the employee may be informed by the Headteacher or the Local Academy Council that they are suspended on full pay pending further investigation of the complaint.

If, following an investigation, the Investigating Officer considers that the facts of the case amount to a prima facie case of gross misconduct, the matter will be referred to the Headteacher.

Following the same procedure as in paragraph 6 above, if on the conclusion of the disciplinary hearing the Headteacher considers the complaint constitutes gross misconduct, they may decide to dismiss the employee without notice or pay in lieu of notice. The Headteacher will confirm the decision in writing following consultation with the CEO.

Where a suspension has taken place that suspension may only be lifted by the CEO.

## **9. RIGHT OF APPEAL**

The employee has a right of appeal against a decision to issue a warning or to dismiss.

Grounds of appeal may include, but are not limited to:

- New, relevant evidence coming to light that was not available during the original hearing
- A belief that the disciplinary procedure was not followed correctly
- The outcome was too severe for the circumstances
- There is evidence of bias, discrimination or victimisation during the disciplinary process

### **Format of the Appeal Hearing**

The appeal will normally be conducted as a review of the original disciplinary decision, considering if the outcome was reasonable based on the evidence available at the time and whether the correct procedure was followed.

The appeal may be conducted as a full rehearing, including reviewing all evidence and potentially hearing new information. This approach will be taken where the original process is found to have had significant procedural flaws or new evidence has come to light.

The decision on the format of the appeal hearing will be made by the Governors Appeal Committee].

Appeals against formal written warnings or dismissal should be made in writing to the Clerk to the Governors, stating the grounds for appeal in full, within 5 working days of the date of the written

decision.

An appeal against a written warning will be heard by the Governors Appeal Committee. The panel may have an HR Adviser present. The Committee may confirm the written warning, reduce a final written warning to a first written warning, or cancel the written warning.

An appeal against dismissal will be to the Governors Appeal Committee, none of whom shall have any previous involvement in the case, wherever possible. The Governors Appeal Committee may have an HR adviser present.

All appeal hearings will be held as soon as possible and, in normal circumstances, within 10 working days after receipt of the appeal. The Clerk to Governors will usually undertake administrative arrangements for any required hearing or meeting. The outcome will be confirmed in writing as soon as possible and usually within five working days of the hearing. There will be no further right of appeal.

## **10. VARIATION IN DISCIPLINARY ACTION**

If appropriate, the senior manager may decide to take informal action (as in Part A above) instead of giving a first written warning.

The senior manager may decide the misconduct is so serious that it justifies a final written warning, without any previous written warning having been given.

Rather than dismiss, the Headteacher may decide to issue no sanction or a lesser sanction.

As an alternative to dismissal, consideration may be given to a change to role or duties, including demotion. Any such change that affects remuneration or other contractual terms will only be implemented with the employee's agreement and in accordance with their contract of employment. Where agreement is not reached, dismissal may remain an option.

Where the Governors Appeal Committee overturns a decision to dismiss or to issue a written warning, they may substitute a lesser sanction. There is no right of appeal against such a decision of the Governors Appeal Committee.

In the event that the Governors Appeal Committee decides not to uphold the decision to dismiss, the employee will be reinstated without loss of pay.

## **11. SUSPENSION PENDING INVESTIGATION**

In certain circumstances, it may be necessary to suspend an employee from duty while a disciplinary investigation is carried out. Suspension is a neutral act and does not imply that any conclusion has been reached or that disciplinary action will necessarily follow.

Suspension will only be considered where it is deemed appropriate and proportionate, for example:

- To protect the integrity of the investigation (e.g. preventing interference with evidence or witnesses).
- To safeguard the welfare of staff, pupils, or the individual concerned.

- Where the continued presence of the employee may pose a risk to the organisation or others.

Where suspension is deemed necessary:

- The employee will be informed in writing of the reason for the suspension and the terms under which it applies.
- The period of suspension will be kept as brief as possible and will be reviewed regularly.
- The employee will remain on full pay (unless otherwise stated in their contract).
- The employee will be provided with a point of contact for support and updates during the suspension period.

Alternatives to suspension (e.g. temporary redeployment or restricted duties) will always be considered before a decision to suspend is made.

## **12. TRADE UNION REPRESENTATIVES**

Where disciplinary action is being considered against an employee who is a trade union representative, the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.

## **13. CONFIDENTIALITY**

All employees subject to disciplinary investigations or proceedings must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.