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RISHWORTH SCHOOL

DISCIPLINARY PROCEDURE

Distribution: Staff Policy Library
Should be read in conjunction with: Appraisal Policy, Capability Procedure & Grievance Procedure.

The Staff Behaviour Policy and the Disciplinary Procedure, with which all employees have a responsibility to familiarise themselves, are designed to promote fairness and consistency in the treatment of all employees and to assist the School to function effectively. The School will follow a fair and effective procedure in the event that disciplinary action is necessary. There may be occasions when the School considers it appropriate to change or omit parts of the procedure. If the School amends the procedure, staff will be given notice of the amendments.

This policy provides a framework for handling issues, ensuring fairness, and encouraging improvement, rather than solely serving as punishment. The goal is to help employees understand expectations, improve their conduct or performance, and ultimately become more effective in their roles

This policy will be applied consistently and fairly to all employees, based on the circumstances of their case. No-one will be treated less favourably on the grounds of their gender, disability, age, race, creed, colour, religion, nationality, ethnic or national origin, trade union membership or activity, sexual orientation, gender reassignment, medical condition or marital status. Furthermore, the employer recognises its responsibility to ensure the implementation of the rules of natural justice as part of this policy: ie the employee should know the nature of the accusation against them; the employee should have an opportunity to state their case; management should act in good faith.

Aims
This policy aims to:

- help and encourage all employees to achieve and maintain satisfactory standards of conduct
- set out the procedures for when an employee's conduct falls below the expected standard
- ensure that all employees are treated fairly and consistently when a disciplinary issue is being dealt with

Scope:

1. This procedure will apply to any disciplinary situation which includes misconduct, cases of poor performance that result from misconduct and cases related to persistent or fraudulent sickness or absence. It is not contractual but applies to all employees, including the Head who should familiarise themselves with its provisions. Performance issues that do not relate to misconduct will be dealt with in accordance

with the Capability Procedure. Grievance which is dealt with under the grievance procedure and ill health which is dealt with under sickness absence procedures unless there is good reason to believe that the absence or ill health are not genuine.

2. The Staff Behaviour Policy: Code of Conduct 7e sets standards of required conduct at work.

3. This Disciplinary Procedure is designed to ensure that these standards are adhered to and provides a fair method of dealing with any alleged failures to observe them. The procedure does not preclude minor disciplinary situations from being dealt with informally.

4. In cases other than gross misconduct an employee whose conduct does not meet the standards will normally first be dealt with informally wherever possible in an attempt to achieve the required improvement. However, the School reserves the right to commence the procedure at any stage if the circumstances warrant such action in exceptional cases.

5. No disciplinary action will be taken until the case has been investigated and the employee has had the opportunity to respond to the allegations in accordance with the procedure set out below. All disciplinary situations will be dealt with without unreasonable delay.

6. In the event of absence of any of those involved, except for the employee who is the subject of the procedure, a deputy may take their place provided that this will not jeopardise the likelihood of a fair outcome.

7. Appendix 1 sets out a non-exhaustive list of examples of what we define as misconduct and gross misconduct**.** For the purpose of this policy, misconduct does not cover staff capability or poor performance issues. These are addressed in our Capability Procedure.

Confidentiality

8. Our aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.

9. An employee, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.

10. Employees will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against them, unless in exceptional circumstances.

Disciplinary Procedure

Investigation

11. When a disciplinary situation arises a suitably skilled senior member of staff will, as soon as reasonably practicable, carry out an investigation into the matter. The purpose of an investigation is for the School to establish a fair and balanced view of the facts relating to any disciplinary allegations, before deciding whether to proceed with a disciplinary hearing. Where there is a lack of appropriate resource within the School, or the nature or complexity of the allegation requires it, an independent investigator may be appointed. The investigation will be confined to establishing the facts and gathering any relevant documentation. Where necessary, the investigating officer will obtain statements from any relevant individuals, these may be via meetings or via a written statement. The witness may be asked to sign the minutes of any such meeting or the witness statement.. An investigatory meeting with the employee may take place if considered appropriate by the investigating officer. Employees do not have the legal right to bring a companion to an investigatory meeting.

12. At the end of the investigation process a written investigation report will be produced by the Investigating Officer. Recommendations will be made in the report usually one of the following:
    1. Formal Action,
    2. Informal action,
    3. No further action.

    The report should include all documents and witness statements.
    The Investigating Officer will also indicate whether the matter is potentially one of gross misconduct

13. If there is no further action or informal action, the employee will be notified in writing.

Minor disciplinary issues

14. Minor disciplinary issues will be dealt with informally at first, and will be escalated only where:

- There has been no resolution
- The issue is more serious
- There are repeated or multiple instances of misconduct
- There is suspected gross misconduct

When dealing with an issue informally, the employee's line manager will organise a meeting with the employee and set out the concerns. This meeting will be held without undue delay whenever there is cause for concern. The line manager will remind the employee of the expected standard of behaviour and consider what support is needed to help them improve. Notes will be taken and retained. Where appropriate, a note of an informal discussion may be placed on the employee's personnel file. Employees do not have the legal right to bring a companion to an informal disciplinary meeting.

If the issue cannot be dealt with informally, for example due to the seriousness of the alleged misconduct, or if the matter is not resolved following an informal meeting, formal procedures will begin. The employee will be notified of this in a face-to-face meeting with the appropriate Middle Manager or Senior Leader, to be held in person, or over video conferencing if necessary. This will be followed up in writing.

Formal Action

Suspension

In some circumstances it will be appropriate to suspend a member of staff temporarily, for example where there is suspected safeguarding issue. This in itself does not constitute disciplinary action or imply that any decision has been made about the allegations.

Where suspension is necessary:

15. The Headteacher or Finance and Operations Director must authorise the suspension. If it is the headteacher who is the subject of the disciplinary procedure, the governors must authorise the suspension
16. Where possible, the employee will be informed of the suspension, along with the likely course of action, guided by the LADO and the police where necessary. This meeting will be held face-to-face, or over video conferencing, if necessary, followed by a notification in writing as soon as possible after the meeting and no longer than 3 working days
17. The employee will be permitted to be accompanied to the meeting by a colleague, a trade union representative or a trade union official
18. The employee will be suspended on full pay
19. While an individual is suspended, they must not visit school premises or contact any pupils or parents/guardians, unless authorised to do so by the Headteacher or Finance and Operations Director. Please note access to the School ICT system may be revoked during this timeframe and school keys may be temporarily held by the school.
20. While an individual is suspended, it may be necessary to prevent them from contacting work colleagues if to do so may prejudice the gathering of evidence.
21. An appropriate member of staff, who is not involved in the disciplinary procedure should be named as a contact at school during the period of suspension, to provide guidance and support to the member of staff under investigation or suspension.

Notification

22. If the investigating officer determines that the matter should move forward to a formal disciplinary hearing, a disciplinary officer will be appointed to lead the disciplinary hearing. This will be a person independent from the investigating officer and they will be appointed by a Senior Leader.

23. If it is decided that there is a disciplinary case to answer, the employee will receive a written notification five working days before the hearing. The hearing could be sooner if it is agreed by both parties. The notification will include:

- Details of the alleged misconduct and its possible consequences, including stating where dismissal is a possibility
- Copies of any written evidence, including witness statements and any relevant documents or other evidence which will be used at the disciplinary hearing
- The time, date and location of the disciplinary hearing (including the details if is to be held over video conferencing, if relevant)
- A statement that the employee has the right to be accompanied by a colleague, a trade union representative or a trade union official. The employee is responsible for arranging his/her representation, including notifying the representative of the hearing date in good time and sending copies of all relevant documentation.
- Notification that the employer intends to call witnesses (if relevant)

If the employee intends to call witnesses, they should notify the disciplinary officer/chair of the disciplinary panel in advance of the disciplinary hearing and it will be for the employee to arrange the attendance of their witnesses.

24. The employee should submit any additional evidence they intend to rely on in advance of the hearing.
25. Confidentiality must be maintained throughout the process so as not to prejudice or influence the outcome of the case. The employee may share all documentation stated above with their representative.

Disciplinary Hearing

26. A disciplinary hearing will be conducted by the Head or Finance and Operations Director (or an appropriate senior member of staff appointed by them, who has had no prior involvement).

27. The employee may be accompanied by a trade union representative or colleague if desired. A companion may make representations, ask questions, and sum up an employee's case, but will not be allowed to answer questions on an employee's behalf. An employee must tell the individual conducting the meeting who his/her chosen companion is, in good time before the meeting.

28. If an employee's chosen companion will not be available to meet at the proposed time, the hearing will be postponed to an alternative time which is reasonable and not more than 5 working days after the original date.
29. A companion, if a colleague, is allowed reasonable time off from duties without loss of pay, but no one is obliged to act as a companion if they do not wish to do so.
30. We will make reasonable adjustments for disabled employees. This may include allowing an employee to bring a companion who is not a colleague and a trade union representative or trade union official.

31. If the employee or their companion cannot attend the hearing, they should inform the disciplinary officer as soon as possible and an alternative time for the hearing will be arranged; this will usually only be rearranged once. The employee must make every effort to attend the hearing. If the employee fails to attend without good reason or is persistently unable to do so (for example, for health reasons), a decision may have to be taken based on the available evidence, including any written representations the employee has made, in their absence. I.

32. The hearing will be chaired by the disciplinary officer. The investigating officer is typically also present.

33. At the hearing, the disciplinary officer will explain the case against the employee and go through the evidence that has been gathered.

34. The employee will be allowed to set out their case and answer any allegations that have been made. The employee will also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They will also be given an opportunity to raise points about any information provided by witnesses.

35. The employee's companion can address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the hearing and confer privately with the employee during the hearing. The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish them to, or prevent the employer from explaining their case.

36. Witnesses will be permitted to provide evidence at the hearing. The employer will be given the chance to cross examine witnesses.

37. A note taker will usually be present but will not be involved in the decision-making process.

38. The School may adjourn the disciplinary hearing if the School needs to carry out any further investigations. The employee will be given a reasonable opportunity to consider any new information obtained before the meeting is reconvened.

39. Following the disciplinary hearing, the employee will be advised of the decision in writing within 5 working days. This communication will specify if no further action is necessary, or, if the employee has failed to meet the required standard.

    In the case of the latter, the employee will also be provided with:

    - Confirmation of where/how the required standard has not been met.
    - any action required by the employee to remedy the situation;
    - any relevant review period /duration of warning and the consequences of continued or subsequent failure to reach and sustain the required standard of performance or conduct; and
    - the right of appeal.

Disciplinary Sanctions

40. If disciplinary action is warranted one of the sanctions below may be issued. A sanction may be imposed at any level including summary dismissal depending on the circumstances.

Oral Warning

41. In the case of a minor offences, the employee will be given an oral warning, setting out the precise nature of the offence, the likely consequences of further offences and specifying, if appropriate, the improvement required and over what period.

42. An oral warning will normally remain in force for three months and a note of the warning will be kept on the employee's personnel record.

First Written Warning

43. In the case of a first act of misconduct, or a repetition of earlier minor offences or a failure to improve, the employee will be given a written warning, setting out the precise nature of the offence, the likely consequences of further offences and specifying, if appropriate, the improvement required and over what period. The written warning will explain that a further instance of misconduct or no change in behaviour within a given timeframe may result in a final warning.

44. A first written warning will normally remain in force for six months and a copy of the warning will be kept on the employee's personnel record.

Final Written Warning

45. In the case of a sufficiently serious offence, or a repetition of earlier offences the employee will be given a final written warning, setting out the precise nature of the offence, the likely consequences of further offences and specifying, if appropriate, the improvement required and over what period. The written warning will explain that a further instance of misconduct or no change in behaviour within a given timeframe may result in dismissal or other disciplinary action

46. A final written warning will normally remain in force for twelvemonths and a copy of the final written warning will be kept on the employee's personnel record. In exceptional cases, depending upon the seriousness and nature of the behaviour, misconduct or infringement, the period for which the final written warning remains in force may be longer.

Dismissal

47. This stage will normally result from continued failure by the employee to act on previous warnings or an act of gross misconduct. The power to decide that members of staff should no longer work at this school rests with the Head or the Finance and Operations Director.

48. Once the decision to dismiss has been taken, the Head or the Finance and Operations Director will dismiss the staff member with notice (or without notice, if the conduct is serious enough to warrant this).
49. . If the decision to dismiss is made the employee will be informed in writing of the reason for dismissal, the date on which the contract between the parties will terminate and the appropriate period of notice.

We will refer a case of gross misconduct by a teacher, trainee teacher or someone holding a teacher reference number to the Teaching Regulation Agency (TRA) if we believe the TRA should consider whether the teacher should be prevented from teaching (see appendix 1 for instances of when this may apply). We will also refer cases to other relevant authorities, including but not limited to the Disclosure and Barring Service, where appropriate.

Alternatives to Dismissal

50. In exceptional circumstances, the following actions short of dismissal may be considered as an alternative to dismissal:

    - a period of suspension without pay;
    - reduction in pay;
    - loss of seniority;
    - demotion; or
    - transfer to another role.

51. These sanctions may be used in conjunction with a written warning.

Criminal Allegations

52. Where an employee's conduct is the subject of a criminal investigation, charge or conviction, we will investigate the facts when we are able to do so (there may be a delay in waiting for a police investigation to be conducted) before deciding whether a formal disciplinary hearing is required.

53. We will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where the employee is unable or has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, we may have to take a decision based on the available evidence.
54. A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if we consider that it is relevant to an employee's employment.

Appeals

55. If an employee feels that the disciplinary action taken against them is wrong or unjust, they may appeal against the decision within ten working days of receipt of the written decision. Such appeals are to be made in writing to the Finance and Operations Director and should include written confirmation of the basis for appeal, any new information/evidence should be disclosed at this stage.

56. The appeal hearing will be convened as soon as is reasonably practicable and will give an employee 10 working days written notice of the date, time and place of the appeal hearing. The appeal hearing will be held by the Head or Finance and Operations Director, or a Governor or panel of up to three Governors (who have had no prior involvement). The Head or Finance and Operations Director will not hear the appeal if they held the disciplinary hearing.

57. If the employee is appealing against a dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful, the employee will be reinstated with no loss of continuity or pay. The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light.

58. Where new evidence arises prior to or during the appeal, the School may need to carry out further investigation. The employee will be given access to any relevant new information or evidence and will have the opportunity to consider this before the hearing and make representations.

59. The employee will have the right to be accompanied at any appeal hearing by a colleague or trade union representative.

60. The employee will be informed of the outcome in writing within 5 working days of the hearing. The outcome may be that:

    - the original decision is confirmed;
    - the original decision is revoked; or
    - an alternative penalty, which is not more punitive, is issued.

61. Such decision will be final and there will be no further right of appeal.

62. In the event of an unsuccessful appeal against a decision to dismiss the original dismissal date shall stand. However, if an employee's appeal is successful, they will be reinstated with no loss of continuity or pay.

Record Keeping

63. A copy of all formal warnings will be retained on an employee's personnel file and in accordance with the School's Staff Privacy Notice and policies and procedures on data retention but will be considered spent after the period specified in the warning.
64. We will disclose any proven, unexpired disciplinary offences by an employee if a reference is requested by a future employer.

Appendix 1:

LEVELS OF DISCIPLINARY MISCONDUCT
The lists below are merely for general guidance and should not be taken as either definitive or comprehensive. Each situation will be dealt with according to the particular seriousness of the situation.

Misconduct is where an employee breaks specific rules about behaviour or conduct. It is where conduct falls below expected standards and is usually wilful. There may be occasions when negligent conduct amounts to misconduct. Breaches of reasonable conduct at work can take many forms. Consideration will always be given to the particular circumstances.

Examples of minor misconduct
Minor time wasting
Occasional lateness
Minor instances of insubordination

Examples of serious misconduct
Persistent or serious instances of insubordination
Persistent bad timekeeping
Continued repetition of previous offences

Examples of gross misconduct
Gross misconduct, which will result in the immediate referral of an adverse report to a Disciplinary Officer and may result in dismissal, is regarded as misconduct of such a nature that it fundamentally breaches the contractual relationship between the employee and the employer.

In exceptional circumstances, employees may be dismissed without notice if it has been established, after investigation and after hearing the employee's explanation at a disciplinary hearing, that there has been an act which may constitute gross misconduct. Misconduct committed outside of work may, depending the circumstances, amount to gross misconduct.

Examples of gross misconduct all of which may result in dismissal include:-

- Theft or fraud from the employer, members of staff, pupils or parents, other offences of dishonesty, such as making a disclosure of false or misleading information under our Whistleblowing Policy maliciously, for personal gain, or otherwise in bad faith or making untrue allegations in bad faith against a colleague;

- Sexual misconduct at work;
- Bullying, discrimination, victimisation, harassment or threatening conduct of other employees, children or parents on the grounds of sex, ethnicity, sexual orientation, disability, religion, belief or age;
- Misuse of the internet, email, mobile telephone or other school facilities;
- Assault or attempted assault;
- Serious violation of the School's policies relating to conduct at work, eg anti-bullying policy, computer security policy etc;
- Falsification of a qualification which is a stated requirement of employment or which results in financial gain;
- Unauthorised use of, processing or disclosure of confidential information or failure to ensure that confidential information in their possession is kept secure;
- Undertaking unauthorised paid or unpaid employment during your working hours;
- Deliberate damage to or misuse of the school's property or that of co-workers or students;
- Being under the influence of drink or illegal drugs or other performance altering substances at work;
- Possession, use, supply or attempted supply of illegal drugs;
- Falsification of records or claims for personal gain e.g. work records, travel expenses etc;
- Wilful disregard of health and safety regulations;
- Serious negligence which causes unacceptable loss damage or injury;
- Serious violation of catering hygiene regulations;
- Intimidation of whistleblowers or witnesses to Hearings;
- Discrimination or contravention of the equal opportunities and discrimination policy;
- Refusal to disclose any of the information required by your employment that may have a bearing on the performance of your duties;
- Negligence or deliberate action resulting in serious loss, damage, or injury;
- Acceptance of bribes or other secret payments;
- Conviction on a criminal charge or acceptance of a police caution;
- Breach of School policies or procedures;
- Serious neglect of duties, breach of statutory rules affecting your work, or a serious or deliberate breach of your contract or operating procedures;
- of colleagues, students or parents;
- abuse or suspected abuse of an employee's position of trust in relation to students at the School; or
- bringing the School into disrepute.

Other similar acts of misconduct may come within the general definition of gross misconduct

It should also be noted that disciplinary action may be considered in relation to acts of misconduct which take place outside of school hours, for example, in instances of criminal prosecution and/or conviction/caution for such actions. In addition, disciplinary action may

also be considered as a result of a teacher's personal use/misuse of electronic communications and social media, including social networking sites. The considerations should be the relevance of the offence to the teacher's duties, the effect on the contractual relationship with the employer and/or on colleagues/pupils/parents or whether the actions of the Teacher brings the reputation of the School into disrepute. Disciplinary measures will not automatically be appropriate in these instances.