

The Mercian Trust

Discipline Policy

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1. Scope

- 1.1 This Procedure applies to all employees within The Mercian Trust.
- 1.2 The 'appropriate manager' used as a reference throughout this policy should be cross referenced with the Trust's Scheme of Delegation
- 1.3 The Disciplinary Procedure will be invoked when an employee breaches rules and/or commits acts of misconduct, which are considered sufficiently serious to warrant formal investigation. Such acts could be either through negligence or wilfulness, they may be single events, which could amount to clear gross misconduct, or persistent minor breaches which the normal management process has been unable to prevent or correct.
- 1.4 This policy has been developed to encourage and assist employees to improve their behaviour and to act in accordance with the standards of conduct required by the Trust and National requirements.

2. Principles

- 2.1 Any disciplinary action considered will apply fairly and equitably and account will be taken of the need to satisfy the tests of natural justice at each stage of the Procedure. All parties will do their best to ensure that the spirit and intent of this procedure is honoured at all times.

The following principles will underpin the Procedure: -

- To ensure that disciplinary matters are dealt with efficiently, within agreed and appropriate timescales.
- To recognise the rights of employees in relation to information, the opportunity to explain their position and the right of appeal.
- To ensure the Investigating Officer will not be the Deciding Manager
- To ensure that disciplinary action may only be taken following a reasonable amount of investigation to establish the facts
- To ensure that anyone who may be subject to disciplinary action has the right, and must be informed they have the right, to be accompanied by a Trade Union representative or by a fellow employee of their choice at all formal meetings and hearings
- To ensure that all investigations, evidence and outcomes are dealt with in the strictest confidence
- To confirm that suspension with full pay is not considered to be disciplinary action as it is without prejudice

3. Informal Resolution and Letters of Expectation

- 3.1 Minor instances of unsatisfactory conduct may, at the appropriate manager's discretion be dealt with informally.
- 3.2 The appropriate manager should discuss the concern with the employee to gather facts relating to those concerns. The informal approach should be used in an attempt to bring to the attention of the employee concerns that their conduct has fallen short of the expectations that the Trust/Academy have of them in the performance of their duties.

- It should be recognised by both parties that informal resolution does not constitute formal disciplinary action and an appropriate manager may, at any time, give an informal warning in the form of a **letter of expectations** for incidents of minor misconduct.
- Such warnings will not be recorded on any record relating to the employee though a copy of any letter of expectations issued will be placed on the employee's personal file. In these circumstances' employees will be provided with reasonable support and be given assistance to effect improvement where necessary.

4. Suspension

4.1 Suspension is a neutral act and should never be an automatic approach when dealing with a potential disciplinary matter. All other options must be considered such as;

- working under supervision
- being placed on restricted duties
- being transferred to a different role within the organisation (the role should be of a similar status to their normal role, and with the same terms and conditions of employment).

Only if all other options are not practical, suspension may become necessary.

4.2 An employee may be suspended on full normal pay (i.e. the pay that is applicable at the time) for a number of reasons. These include:

- where the appropriate manager believes there to have been an incident of gross misconduct; and/or
- where it is felt that the employees' presence at work would inhibit any investigations; and/or
- where it is in the best interests of the employee; and/or
- where it is deemed necessary for the protection of other employees/clients/pupils or school property/systems, particularly computer systems where the potential for sabotage may exist.

4.3 Any decision to suspend must be made by the appropriate manager. The advice of your HR provider should be sought. Where possible, suspension should be carried out face to face. The employee should be told of the allegation(s) and given an opportunity to respond, if they wish to do so.

4.4 Any such action will be confirmed in writing and the letter to the employee will indicate the reason(s) for suspension and a named point of contact during this time.

4.5 It is in everyone's interests that an investigation is undertaken as expediently as possible. The appropriate manager will keep the need for suspension under review and will formally review the position no later than one month from the date of the initial suspension and at regular intervals, no longer than one month, throughout the period of suspension.

4.6 During the suspension the employee must adhere to any conditions set out in the letter of suspension. Any breach of those conditions may result in further disciplinary action being taken.

5 Formal Procedure

- 5.1 **BEFORE STARTING A FORMAL PROCEDURE:** When considering entering into the formal procedure, headteachers/senior leaders should consult with the Mercian Central Team and the Trust's HR advisor.
- 5.2 **THE BAR FOR FORMAL PROCEDURE:** Formal disciplinary action will be necessary when an employee's conduct continually, substantially or grossly falls short of required standards.
- 5.3 **PRELIMINARY INTERVIEW / INITIAL CONVERSATION:** In such circumstances, an **appropriate manager** should conduct a preliminary, objective interview as soon as possible to gain an understanding of the circumstances of the situation and to ascertain all the facts. This usually includes advising the employee of the allegation(s) and asking for an account of their behaviour. These disciplinary arrangements do not preclude this initial conversation with the employee on their own, but any preliminary interview must not expand into a formal investigatory interview or disciplinary hearing.
- 5.4 **APPOINTING AN INVESTIGATING OFFICER:** If the appropriate manager, at the conclusion of the preliminary interview, considers that a formal investigation is needed, an **Investigating Officer (IO)** will be appointed who will have had no prior involvement in the case. The appropriate manager who conducted the preliminary interview may be appointed as **IO**, provided they have no prior involvement in the case. From this point the employee will have the right to be accompanied at formal meetings by a work colleague or a Trade Union Official.
- 5.5 In agreeing to be an **IO**, it is accepted that the investigation will be undertaken promptly and with the commitment of their Employer (where applicable) that it will be treated as a work priority. **IO's** should have relevant experience, training and appropriate seniority to the case and the employee involved. IOs may be:
- A senior leader in the school the employee works
 - A senior leader from another school or central team within the Trust
 - An external professional from another Trust or service provider (with the approval of the CEO)
- 5.6 **THE INVESTIGATION:** The **IO** should establish the facts promptly before recollections fade, taking into account the statement of the employee or any available witnesses. The IO should keep written statements, signed where possible, of any interviews they undertake.
- 5.7 At conclusion of the investigation the **IO** will present the findings to the Deciding Manager (DM) who will then consider the following:

(A) Case to Answer

The IO will present the findings to the DM who will review the information and decide if there is a case to answer. If the DM considers, on the evidence available, that a disciplinary hearing should be held, the employee will be informed by letter.

The DM in most cases be the chair of the disciplinary hearing.

A date will be set for the hearing and the employee will be informed in writing at least 7 working days before the date. It is the employee's responsibility to advise their trade union/representative of this.

(B) No case to answer

If at the conclusion of an investigation, the DM deems there is no case to answer the employee will be informed personally and no formal record will be contained on their personal file.

The DM may deem at this point that it is appropriate to revert to an informal resolution by way of a letter of expectation (see section 3.3).

6. The Disciplinary Hearing

6.1 The letter calling the hearing will provide 7 working days' notice of the hearing, unless a lesser period has been decided by mutual agreement. The letter will be handed to the employee or sent by first class/recorded or special delivery post or email.

In the letter informing them of the hearing, the employee will be informed of: -

- the place, date and time of the hearing;
- full details of the alleged offence(s).
- the right to be represented by a fellow worker, a trade union representative or an official employed by a trade union (in accordance with the ACAS Code of Practice);
- the right to call witnesses;
- the right to produce documentation relevant to the case and the requirement to exchange any written statements that the employee intends to submit, and to supply details of any witnesses that they intend to call, three working days before the hearing;
- the right to receive copies of all evidence directly relevant and gathered during the investigation.
- A copy of the Disciplinary Procedure will also be enclosed.

6.2 It will be considered unfair if changes are introduced at the hearing, as the individual and their representative will be unprepared for these. If further complaints arise, the employee should be notified at least 3 working days in advance of the hearing and it may be necessary to postpone the hearing for further investigation to take place and to allow the employee time to collect further evidence and to prepare their defence;

6.3 The format of the hearing will be in accordance with Appendix A.

6.4 The hearing will be chaired by the appropriate manager / authority as detailed in table 1 at the end of this policy.

6.5 A Human Resources Adviser will usually attend the hearing to assist and advise on the conduct and procedure of the hearing unless the appropriate manager / hearing chair feels it is unnecessary.

7. Disciplinary Outcomes

The following forms of disciplinary action are available to the appropriate manager / authority hearing the case. Please note that these penalties can only be imposed at the conclusion of a formal hearing. The hearing may also conclude that there is no case to answer or recommend non-disciplinary action(s) including informal resolution by way of a letter of expectation (see section 3.3).

(A) First Written Warning

If the offence is regarded serious enough to be dealt with through the formal procedure, the employee may be given a formal written warning. This warning should give details of the breach of discipline, of the improvement required, any assistance the Trust/Academy is able to offer, the timescale allowed for improvement and the right of appeal.

A note of this warning will be placed on the employee's personal file and a copy will be sent to the employee and their representative. It will be disregarded for conduct and disciplinary purposes **after six months** subject to satisfactory conduct.

(B) Final Written Warning

Where there is failure to improve during the live stage of a prior warning, or where the offence is sufficiently serious the employee may be given a final written warning. This should give details of the breach of discipline, any improvement required, any assistance the Trust/Academy is able to offer and a warning to the employee that failure to improve may lead to dismissal or some other action short of dismissal. It should also refer the employee to their right of appeal.

The final written warning will be placed on the employee's personal file and a copy will be sent to the employee and their representative. It will be disregarded for disciplinary purposes **after twelve months** subject to satisfactory conduct and performance.

(C) Dismissal

Dismissal may result in cases where a formal disciplinary warning has been followed by further misconduct or in the case of gross misconduct. Dismissal must be on notice except in the case of gross misconduct.

Where at the conclusion of the disciplinary hearing, an employee's work, conduct or omission is felt to warrant the termination of that employee's contract of employment, then such a decision will be confirmed in writing to the employee, signed by the appropriate manager or Chair of the panel which conducted the hearing, as soon as possible.

The letter will indicate: -

- the decision (to terminate employment);
- the actual breach of discipline;
- where applicable, any period of notice due, or payment in lieu of notice;

- **the right of appeal**, including the right to be accompanied by a Trade Union representative, fellow employee or an official employed by a Trade Union (in accordance with the ACAS Code of Practice).

(D) Other Forms of Disciplinary Action

Where at the conclusion of a hearing, an employee's work, conduct or omission is felt to warrant a penalty other than or in addition to, a warning or termination of employment, then such a decision will be conveyed to the employee.

Confirmation of this decision will be in writing and will be sent to the employee as soon as possible.

If relegation/redeployment is considered as an alternative to dismissal, this shall only be where an appropriate vacant post exists and shall be in addition to the issue of a written warning or final written warning.

Where a disciplinary sanction is applied the warning will be expunged from the employees record after the given timescale has expired.

8. Referral to Teaching Regulation Agency (TRA)

If the employee resigns once the formal procedure has commenced, then a referral to the TRA will be considered in line with the 'managing allegations against staff policy'. There is a statutory duty to make a referral in the case of dismissals.

9. Referral to the Local Authority Designated Officer and the Disclosure & Barring Service (DBS)

In all cases where there has been a risk of harm to children or vulnerable adults a referral will be made to the Local Authority Designated Officer (LADO).

If any employee resigns, retires, has been made redundant or transferred to a position which is not regulated or controlled activity this will still be referred to the DBS.

In all cases where there is an allegation against staff in relation to the safeguarding of children you must refer to the Trust's managing allegations against staff policy and safeguarding policy.

10. Disciplinary Rules

It is impossible to prescribe a common set of disciplinary rules covering all aspects of employment, but the following examples may, depending on circumstances, be considered as gross misconduct.

Gross misconduct is conduct of such nature that the employer is justified in no longer tolerating the continued presence at the place of work of the employee who commits such an act.

Examples of offences of gross misconduct, which have led to dismissal of employees are included overleaf. (This list is neither exclusive nor exhaustive and individual circumstances must be considered before suspension);

- Theft, fraud and deliberate falsification of records/documents
- Physical violence or threat of violence to another employee/client/pupil
- Harassment and bullying
- Deliberate damage to, or unauthorised removal of, Trust property
- Serious incapability brought on by alcohol or drug abuse
- Serious negligence which causes unacceptable loss, damage or injury
- Serious acts of insubordination
- Serious infringement of health and safety rules and/or Trusts' Code of Conduct
- Serious breach of confidence
- Criminal Offences
- Unlawful discrimination against another employee, an applicant for employment, or a client in contravention of the Trust's Equality Policy
- Unauthorised use of a company vehicle
- Knowingly disclosing confidential information without the express consent of senior management
- Neglect of duty or behaviour liable to bring the school/establishment into disrepute
- Serious unauthorised use of the schools' facilities/equipment including computers
- Deliberately accessing internet sites containing pornographic, offensive or obscene material
- Serious misuse of the Trust's property or name

11. Use of CCTV/Surveillance Equipment, Voice recordings & ICT Records

If CCTV, telephone or ICT evidence is to be used as part of the disciplinary process, it must be treated in the same way as any other evidence. The employee should be informed what the evidence is and given the opportunity to review it during the course of the investigation.

12. Trade Union Officials

Disciplinary action against an accredited Trade Union official can lead to a serious dispute if it is seen as an attack on the Union's functions. Although normal disciplinary standards should apply to their conduct as employees, no disciplinary action beyond the level of an informal verbal warning should be taken until the circumstances of the case have been discussed with a senior Trade Union representative or full-time official of the Union concerned.

13. Records of Hearings/Action

- 13.1 Where at the conclusion of a hearing it is decided not to take any action or should any disciplinary action be reconsidered and effectively withdrawn, any written reference will be deleted from the file of the employee concerned. The employee and his/her representative will be informed accordingly.
- 13.2 Any material relating to disciplinary action which has been recorded on an individual's personal file/records will be disregarded after the lapse of the periods set out in this procedure, except where an employee's conduct is satisfactory throughout the period that the warning is in force only to lapse soon after. Where a pattern emerges or there is evidence of abuse, the employee's disciplinary record will be borne in mind when deciding how long any current warning should last.

14. Appeals

- 14.1 Any employee who has been subject to disciplinary action under this procedure has the right of appeal against such action. They must write to the appropriate manager/authority within 5 working days of the receipt of the letter from them confirming the outcome of the disciplinary hearing.
- 14.2 An employee writing to appeal against dismissal should write to the Trust's Chief Executive Officer.
- 14.3 Appeals will normally be convened within 7 working days of receipt of the letter. All parties to the appeal must endeavour to make themselves available, often at short notice and to agree a mutually convenient date. It is not appropriate for individuals who have been involved in the investigation and/or decision-making process to be involved in the appeal.

The letter convening an appeal hearing will indicate: -

- date, time and venue;
 - the right to be accompanied by a Trade Union representative, fellow employee, an official employed by a trade union (in accordance with the ACAS Code of Practice);
 - the right to call a witness;
 - right to produce documentation relevant to the case;
 - the requirement to exchange documentation 3 working days before the hearing;
- 14.4 Following the appeal hearing the Chair of the appeals panel will confirm the outcome to the employee which will either be to uphold or reject the outcome of the original decision-making appropriate manager or panel.

Where this includes the reinstatement of the employee support may be provided if necessary.

The outcome of the appeal hearing will be provided to the employee in writing within 10 working days.

15. Link with other policies

- 15.1 **Grievance Policy** - Where you submit a complaint during disciplinary proceedings, this will not normally stop the proceedings from progressing. The grievance and disciplinary may be run concurrently where they are related or paused if it is determined that the outcome to the grievance may have a bearing on any disciplinary decision reached.
- 15.2 **Managing Attendance at Work Policy** - Where you are absent due to sickness whilst a disciplinary matter is pending, the managing attendance at work procedure will apply as normal. However, those responsible for keeping in touch would not normally be the same people involved in the handling of your case. Under these arrangements due regard will be had for what is said by Occupational Health and any information you may wish to provide from your GP. We will arrange for you to see Occupational Health as soon as possible for them to assess your health generally and whether or not you are fit to participate in these procedures. Being absent from

work due to sickness will not automatically stop the disciplinary procedure progressing.

- 15.3 **Managing Allegations against staff policy** – Where a conduct issue involves a safeguarding risk, the investigation will not start until the Designated Officer has been consulted.

Table 1.

Employee	Investigating Officer	Deciding Manager (Hearing Chair)	Advisor(s) to the DM	Appeal Panel	Advisor(s) to the Appeal Panel
Teacher	Senior leader from own school or another school in the Trust	Headteacher	Trust-appointed HR Advisor.	2x LGB 1x Trust representative.	Trust-appointed HR and/or Legal Advisor.
Leadership Spine	Senior leader from own school or another school in the Trust	Headteacher	Trust-appointed HR Advisor.	2x LGB 1x Trust representative.	Trust-appointed HR and/or Legal Advisor.
Deputy Head (or second most senior member of staff who deputises for the HT)	Senior Leader from within the Trust Central Team or Headteacher from another school in the Trust	Headteacher	Trust-appointed HR Advisor.	2x LGB 1x Trust representative.	Trust-appointed HR and/or Legal Advisor.
Associate Staff	Senior leader from own school or from within the Trust central team.	Headteacher or Senior Leader from the Central Team	Trust-appointed HR Advisor.	2x LGB 1x Trust representative. Or 2x Non-executive governors/trustees 1x Trust representative.	Trust-appointed HR and/or Legal Advisor.
Headteacher or Trust Executive Leader	Independent IO appointed by the CEO	CEO	Trust-appointed HR Advisor.	3x Trustees	Trust-appointed HR and/or Legal Advisor.
CEO	Independent IO appointed by the Chair of the Trust	3x Trustees	Trust-appointed HR Advisor.	3x Different Trustees	Trust-appointed HR and/or Legal Advisor.

APPENDIX A

Formal Hearing Procedure

Disciplinary Hearing

Attendees

- Deciding Manager (as per scheme of delegation)
 - Adviser to Deciding Manager
 - Note taker
 - Employee
 - Representative
1. Introduction Deciding Manager confirming;
 - a. The name and role / purpose of those in attendance,
 - b. The purpose of the meeting and explanation of procedure,
 - c. The procedure – how the meeting will be conducted,
 - d. The allegation and potential outcome.
 2. Deciding Manager confirm that all written documentation (Disciplinary Report and supporting documentation / written submissions provided by the employee) have been fully reviewed.
 3. Only if necessary - Deciding Manager may ask questions / points of clarity of the Investigating Officer followed by employee/rep having opportunity for questions/points of clarity. (NB: the Investigating Officer should be available but will not be present in the hearing unless called)
 4. The employee and / or their representative respond to the allegation(s) / state their case calling any witnesses where appropriate
 5. The Deciding Manager and their adviser may ask questions of the employee and / or their representative, and of any witnesses called. NB. The Deciding Manager may also choose to call witnesses.
 6. The Deciding Manager as Chair of the meeting summarises the main points and asks the employee if they wish to add any further points in support of their case.
 7. The meeting will adjourn for the appropriate manager/authority to consider their decision.
 8. The meeting is reconvened, and the decision is verbally given to the employee (Note: this may not be possible if more time is required to reach a decision).

Note 1. When the Deciding manager has heard the case, they will consider what action is necessary. All others present will withdraw. The Adviser to the deciding manager including any specialist advisors, and the note taker may remain with the deciding manager when they consider the case.

Note 2. Please note that this Procedure may be varied by the mutual consent of all parties involved. Decisions will be confirmed in writing, including the right of appeal within 10 working days.