



# **Disciplinary Procedure and Rules Relating to Misconduct for all Employees.**

**Approved by:** Board of Directors **Date:** September 2024

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## 1. Terms of Reference

1.1 This policy applies to all employees of the Synergy Multi-Academy Trust.

Definitions:

- **Chief Executive Officer (CEO)** the Trusts most senior employee and designated Accounting Officer and reports directly to the Trust Board.
- **Deputy Chief Executive Officers (DCEO)** the Trusts two Executive Head Teachers with responsibility for primary and secondary teaching.
- **Senior Manager** normally refers to a person from the Senior Leadership Team (SLT) delegated by the CEO, Deputy CEO's, Director of People and Chief Financial Officer to deal with a disciplinary matter under this procedure. The senior manager may normally only make a decision to issue up to and including a final written warning.
- **Dismissing Manager** normally refers to either the Chief Executive Officer, Deputy Chief Executive Officer, Head of School/Head Teacher, Director of People and Chief Financial Officer, and in some instances a sub committee of the Trust Board.
- **Employee** refers to any employee, teaching and support, employed to work for Synergy Multi-Academy Trust.
- **Investigating Officer** normally refers to a more senior manager, peer, or an external person or body that has been appointed to complete an investigation.
- **Companion** refers to a person chosen by the employee to accompany them, who shall be a trade union representative or a workplace colleague.
- **Board Committee** may be convened to deal with a case which involves the CEO or Deputy CEO.
- **Appeal Hearing Manager** normally refers to either the Chief Executive Officer, Deputy Chief Executive Officer, Head of School/Head Teacher, Director of People and Chief Financial Officer, and in some instances a subcommittee of the Trust Board.
- **Board Appeal Committee** may be convened to hear an appeal which involves the CEO or Deputy CEO.
- **Trust** refers to Synergy Multi Academy Trust.
- **School Days** refers to working days excluding school holidays.

## 2. Introduction

- 2.1 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 Trust.
- 2.2 Examples of the type of conduct that are considered to be misconduct or gross misconduct, which could lead to action under this Disciplinary Procedure, are set out in the Disciplinary Rules in Part C which apply to all employees and should be read in conjunction with Part A and B of this procedure.
- 2.3 This procedure is non-contractual for guidance only and may be amended depending on the circumstances. This procedure applies to all employees. It does not apply to agency workers or contractors.
- 2.4 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, or the probationary period is not complete.
- 2.5 In cases against the Chief Executive Officer or Deputy Chief Executive Officer, a Board Committee has

the authority to discipline or dismiss in accordance with the procedure set out below.

### **3. Equality and Diversity**

- 3.1** The procedure will be operated in accordance with the Trust's Equality and Diversity Policy and Objectives. The Trust 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.

## **PART A – Informal Procedure**

### **4. Informal Action**

- 4.1** Managers should seek to resolve minor misconduct informally and as soon as it occurs. 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.
- 4.2** There is no appeal against management advice given, which is likely to be retained on the employee's employment file by way of a written memorandum/email.
- 4.3** The written memorandum/email 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/email 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. Investigation**

- 5.1** Prior to any disciplinary action, allegations shall be promptly dealt with and carefully investigated, including obtaining statements from witnesses where appropriate. HR advice must be obtained from the Trust's HR Advisor and HR Provider.
- 5.2** If the complaint is serious, the employee may be informed by the line manager, a senior manager or Board member that they are suspended on full pay pending further investigation of the complaint.
- 5.3** Employees may be required to attend a formal investigation interview. The investigating officer will write to the employee to inform them as soon as practicably possible, normally 2-3 working days in advance (please also refer to paragraph 5.3), setting out:
- The date, time and place of the investigation meeting
  - The allegation/s and their possible consequences
  - The employee's right to be accompanied by their companion.
- 5.4** The notice period for the investigation interview can be reduced where all parties agree to such a reduction.
- 5.5** At the investigation interview the employee against whom allegations are made shall have the right

to be informed of the nature of the allegations and to respond if they so choose. The investigation interview will be postponed once to allow for a trade union representative to attend and best efforts will be made to agree a mutually agreeable time, date and location.

- 5.6 The investigation shall, where possible, be undertaken by a more senior manager, peer or externally appointed investigator.
- 5.7 At the discretion of the investigator, some or all of the meetings taking place as part of the investigation process, may be completed using video conferencing software.
- 5.8 Where there may be potential for a criminal investigation the Trusts investigation must give due regards to any current, future or anticipated Police or Local Authority Designated Officer (LADO) investigation or TLA referral.

## **6. Disciplinary Hearing**

- 6.1 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 to inform them as soon as practicably possible, giving at least 10 school days in advance, setting out:

- The date, time and place of the disciplinary hearing
- The allegation/s and their possible consequences
- The employee's right to be accompanied by their companion
- The titles of enclosed copies of any documents to be used as evidence
- The names of any witnesses to be called by the Senior Manager
- The employee's right to call witnesses on their behalf
- The name and position of any HR adviser who may accompany the senior manager at the hearing
- 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)

At the discretion of the senior manager, some or all of the meetings taking place as part of the disciplinary process, may be completed using video conferencing software.

- 6.2 The employee must advise the senior manager of the following, at least three school days in advance of the hearing:
  - The name and designation of their companion
  - Provide any written documentation to be considered
  - The names of any witnesses that they wish to call
  - Any special requirements (e.g. disability, language requirements)
- 6.3 At the disciplinary hearing, before the senior manager and the HR Advisor, 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 and to call any witnesses and raise points about any information provided by witnesses.

**6.4** At the hearing, the senior manager will consider the matter and may inform the employee of the outcome verbally (followed up in writing) or confirm the decision in writing to the employee as soon as possible and usually within five school days of the hearing, to likely to include:

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

## **7. Formal Disciplinary Action**

### **First Written Warning**

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

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

### **Final Written Warning**

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

### **Dismissal**

**7.4** If a further or similar complaint is received before the final written warning has expired, the complaint will be referred to a hearing following the same procedure as in paragraph 6 above.

**7.5** If the Dismissing Manager decides the complaint is justified, they may decide to dismiss the employee. The Dismissing Manager, after consideration may inform the employee of the outcome verbally (followed up in writing) or confirm the decision in writing to the employee as soon as possible and usually within five school days of the hearing. The Dismissing Manager will usually state the decision, the reason(s), inform the employee of their right to appeal, and who the appeal should be sent to.

## **8. Gross Misconduct**

- 8.1** 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, Part C of this procedure), the employee may be informed by the line manager, a senior manager or Board member that they are suspended on full pay pending further investigation of the complaint.
- 8.2** If, following an investigation, the Investigating Officer considers that the facts of the case amount to gross misconduct, the matter will normally be referred to a senior manager that holds the approval to dismiss, although no inference of a decision should be formed if the complaint is referred to a senior manager with the necessary approval.
- 8.3** Following the same procedure as in paragraph 5 above, if on the conclusion of the disciplinary hearing the dismissal manager considers the complaint constitutes gross misconduct, they may decide to dismiss the employee without notice.
- 8.4** Where a suspension has taken place, that suspension may only be lifted by a senior manager or Board member.

## **9. Right of Appeal**

- 9.1** The employee has a right of appeal against a decision to issue a warning or to dismiss.
- 9.2** Where the DCEO has not been involved with the disciplinary hearing, they may hear an appeal against a written warning or dismissal. Where the DCEO has been involved then an alternative DCEO or senior manager will hear an appeal against a written warning or dismissal.
- 9.3** Appeals against a written warning, or dismissal should be made in writing to the Director of People, stating the grounds for appeal in full, within 5 school days of the date of the written decision.
- 9.4** All appeal hearings will be held as soon as possible and, in normal circumstances, within 10 school days after receipt of the appeal. The Appeal Hearing Manager will usually undertake administrative arrangements for any required hearing or meeting.
- 9.5** The Appeal Hearing Manager, after consideration may inform the employee of the outcome verbally (followed up in writing) or confirm the decision in writing, but usually within five school days of the appeal hearing. The Appeal Hearing Manager will usually state the decision, and the reason(s). There will be no further right of appeal.

## **10. Variation in Disciplinary Action**

- 10.1** If appropriate, the senior manager may decide to take informal action (as in Part A above) instead of giving a first written warning.
- 10.2** 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.
- 10.3** Rather than dismiss, the senior manager may decide to issue no sanction or a lesser sanction.
- 10.4** In determining an appropriate sanction, consideration may be given to a change to role/duties, which may impact on remuneration.
- 10.5** Where the Appeal Hearing Manager 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.

**10.6** In the event that the Appeal Hearing Manager decides not to uphold the decision to dismiss, the employee will be reinstated without loss of pay.

## **11. Trade Union Representative**

**11.1** 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.

## **12. Confidentiality**

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

## **PART C – Disciplinary Rules**

These disciplinary rules are intended to give examples of the type of conduct that is considered to be misconduct or gross misconduct, and which could lead to action under this disciplinary procedure.

## **13. Gross Misconduct**

**13.1** Gross misconduct is a serious breach of contract and includes misconduct that is likely to prejudice the Trust, its reputation or irreparably damage the working relationship between the Trust and its employee/s, resulting in a loss of trust and confidence. Employees suspected of committing an act of gross misconduct, may be suspended with full pay, pending investigation. Allegations of Gross misconduct will be dealt with under this disciplinary procedure and, if upheld will normally lead to dismissal without notice (summary dismissal). The following are examples of matters that are normally regarded as gross misconduct. This list is intended as a guide and is not exhaustive:

- Behaviour that has or may have harmed a child or, behaviour towards a child or children that indicates an employee would pose a risk of harm to children, for example:
  - Sexual behaviour towards or relations with a pupil
  - Physically harming a pupil
  - Criminal offences related to or against a child

Child/children relates to anyone under the age of 18.

- Criminal activities or offences, whether committed at work or not, that may affect the Trust's reputation or otherwise affects the employee's suitability and/or ability to continue in employment.
- Sexual misconduct, whether at work or not and whether criminal or not.
- Acts of physical or threatened violence, vandalism, bullying or behaviour which provokes violence.
- Possession, use, supply or attempted supply of illegal drugs or any other inappropriate substances, whether illegal or not.

- Being under the influence of alcohol or other substances that make you unfit to perform your duties during working time, or illegal use of drugs at any time.
- Deliberately accessing internet sites containing pornographic, offensive or obscene material on Trust equipment or during working time.
- Communicating offensive, obscene or unauthorised sexually explicit material whether verbally, written, in electronic communication, or by social media.
- Serious negligence, serious neglect of duties or, a serious or deliberate breach of the employee's conditions of employment, operating procedures, public examination rules, DfE statutory requirements, statutory rules affecting an employee's work or, Health and Safety rules, for example:
  - Failure to comply with the Prevent Duty
  - Failure to report safeguarding concerns
  - Failure to exercise proper control or supervision of pupils
  - Disclosure of restricted public examination material or content
  - Falsifying sickness absence
  - Taking leave when permission has been denied
  - Job Abandonment (two days)
  - Ignoring handling instructions/responsibilities/safety regulations to include those in relation to chemicals, machinery, equipment or food.
- A serious breach of the Trust's Code of Conduct.
- A serious act of insubordination.
- Dishonesty associated with place of work or job being undertaken, for example:
  - Theft, or unauthorised removal, or misuse of property.
  - Fraud, forgery or other dishonesty, including fabrication of expense claims, time sheets, qualifications, application forms, public examination forms and any other forms or records in use, falsification of any information given on the employee's application form for a post, entitlement to work (including immigration status) in order to gain employment or other benefits or falsification of registration of pupils.
  - Demanding or accepting monies or other considerations as a bribe for the use of Trust property or provision of Trust services.
  - Failure to disclose criminal convictions, cautions, bindover orders reprimands or warnings (except those which are 'protected' under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended from time to time) or, failure to disclose

during the course of employment an arrest or summons for an offence, a conviction, a bindover order, a reprimand or a warning given by a police force.

- Undertaking unauthorised paid or unpaid employment during working hours, including during periods of sickness absence.
- Unauthorised use, or disclosure of, confidential information (or information which is of a confidential nature) or failure to ensure that such information in an employee's possession is kept secure.
- Making statements that are or could be damaging, slanderous or libelous whether verbally, written, in electronic communication or by social media, which could be harmful to a pupil, employee, a governor, a Board Member, a member of the public, or to the Trust's reputation.
- Unlawful harassment or victimisation of, or unlawful discrimination against, a pupil, an employee or other worker, a governor, a Board Member or a member of the public.
- Victimising a person who has raised concerns, made a complaint, given evidence or information under Trust policies, e.g., grievance procedure, disciplinary procedure or otherwise.
- Making a disclosure of false or misleading information under the Trust's Whistleblowing policy maliciously, for personal gain, or otherwise in bad faith against a person or, making untrue allegations in bad faith against a person.
- Bringing the Trust into serious disrepute.
- A serious data breach (or series of) and a failure to follow the Trusts GDPR policies and procedures.

## 14. Misconduct

**14.1** The following are examples of matters that will normally be regarded as misconduct and will be dealt with under the Trust's disciplinary procedure. This list is intended as a guide and is not exhaustive.

- Absenteeism and lateness, for example:
  - Unauthorised absence, including the employee leaving their job during working hours without permission, or sufficient cause for absence
  - Frequent failure to attend work punctually
  - Failure to comply with our sickness absence reporting procedure
- Neglect of duty, for example:
  - Failure to adopt safe working practices/use protective equipment where required by law or management
  - Damage to, or unauthorised use of Trust property or contractor's property
  - Insubordination
- Obscene language or other offensive behaviour.
- Undertaking additional employment outside normal working hours without authorisation.
- Breaches of Trust policies.
- Breaches of the employee's contract.
- A data breach (or a series of) and a failure to follow the Trusts GDPR policies and procedures.

## **PART D – Referrals to External Bodies**

### **15. Referrals to External Bodies**

Where any referral is made and meets the threshold, the employee will be informed in writing as soon as possible either before or following the referral, unless informing the employee of the referral could jeopardise an investigation. This decision will be made in conjunction with the relevant external body.

External bodies include; The Local Authority Designated Officer (LADO), Disclosure and Barring Service (DBS), Teaching Regulation Agency (TRA) and the Police.

### **18. Grievance complaints**

18.1 If an employee wishes to raise a grievance during a disciplinary procedure about the way the disciplinary process has been conducted, this will not be normally heard under the grievance procedure but can be raised during the disciplinary hearing and any subsequent appeal. If action taken by a Senior Manager/Dismissal Manager is the subject of the grievance, they will delegate the matter to another Senior Manager for consideration and decision.