



# DISCIPLINARY PROCEDURE FOR TEACHING AND SUPPORT STAFF IN Diocese of Salisbury Academy Trust

This model procedure will apply to both teaching and non-teaching staff

**For adoption and implementation from**

**Approved**

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## Index

### Section

	Page
Duties, Responsibilities and Powers of DSAT Multi Academy Trust.	3
1. Policy Statements	3
2. Who does this procedure apply to?	3
3. Who is responsible for discipline and dismissal?	4
4. Raising a Grievance during a disciplinary	5
5. What is misconduct	5
6. Misconduct – Formal Stage	6
Managing child protection allegations	8
Conducting the investigation	8
Suspension	8
Concluding the investigation	9
7. The Disciplinary Hearing	8
8. The procedure to be followed at the hearing	9
9. Possible outcomes	10
10. Disciplinary Sanctions	10
11. Dismissal	11
12. The Appeal Process	11
13. Related Policies and Guidance	14

## Duties, Responsibilities and Powers of Diocese of Salisbury Academy Trust (DSAT).

- I. **Diocese of Salisbury Academy Trust** (DSAT) are the employers of the school's teaching and support staff. DSAT therefore has the power to dismiss a member of staff at any of its Academies.
- II. The Local Authority does not have an automatic statutory right of attendance at dismissal proceedings, but DSAT under certain circumstances may accord the Local Authority rights to attend and give advice. Where the decision to invite the Local Authority has been taken this decision will be communicated to the Local Advisory Board (LAB) as soon as possible. Where the Local Authority is accorded such advisory rights, any advice given will be considered by those concerned before making a decision.
- III. DSAT will agree where such rights are accorded the Local Authority to consider the advice given by those concerned before any decision is made.

1.

### Policy Statement

- 1.1 DSAT and its Academies have a statutory obligation to adopt formal policies and procedures for dealing with staff conduct and discipline (School Staffing (England) Regulations 2003). A sound standard of discipline is essential for the efficient and effective management of schools.
- 1.2 This procedure is designed to help and encourage all employees to achieve and maintain satisfactory standards of behaviour and attendance and comply with the rules of DSAT and/or its Board. It provides a method of dealing with any apparent shortcomings in conduct and can help an employee to become effective again. It aims to ensure consistent and fair treatment for everyone and for matters to be dealt with speedily.
- 1.3 The Disciplinary procedure will be made known to all staff and remain accessible to them, if requested a copy will made available on request from HR.

2.

### When does this procedure apply?

- 2.1 This procedure does not apply where there are matters of:
  - I. **minor misconduct** that can be settled informally by means of counselling or informal reprimand in order to improve conduct;
  - II. **grievance** which is dealt with under a separate procedure which has been set out by DSAT and/or its Board;
  - III. **competency or capability** for which there is a separate procedure set out by DSAT and/or its Board, unless it is clear that the employee is capable of reaching the required standard and has actively not done so;
  - IV. **ill health** for which there is a separate procedure set out by DSAT and/or its Board, unless there is good reason to believe that the absence or ill health is not genuine;
  - V. **bullying, harassment, discrimination and/or victimisation** which are dealt with in the first instance, under the Dignity at Work Policy.

3.

### Who is responsible for the discipline and dismissal?

- 3.1 DSAT and/or its Board has the overall responsibility for dismissing staff, with powers to delegate to the Executive Principal, LAB and Principal responsibilities up to and including initial staff dismissal decisions. Under the Education Act 2002 School Staffing (England) Regulations 2003, the Principal (Executive Principal in cases of the Principal) should be given the delegated responsibility to make decisions up to the initial dismissal decision, (except in certain circumstance, see 3.2 below) following which there is an opportunity to appeal to the appeals panel of the LAB and/or DSAT Board. Dismissal and notice periods are effective from the initial dismissal decision. Should the appeal be successful reinstatement will also be from the original date with no break in service continuity.
- 3.2 Principals (Executive Principal in cases of the Principal) may therefore lead the process of making the initial dismissal decision unless the following circumstances apply:
  - I. the Principals (Executive Principal in cases of the Principal) is unwilling to perform these functions and their previous history at the school did not include any such responsibilities.
  - II. the Principals (Executive Principal in cases of the Principal) has been directly involved in disciplinary procedures leading to dismissal, has instigated a proposal to dismiss or is a witness of particular conduct giving grounds for the dismissal in question.
- 3.3 In situations where it is not appropriate for the Principals (Executive Principal in cases of the Principal) to perform these functions (see paragraph 3.2 above), the staff discipline/dismissal committee of the LAB will be responsible for the process of making such decisions. However the DSAT Board recommends wherever possible that the LAB staff discipline/dismissal committee deals with cases of gross misconduct and Principals (Executive Principal in cases of the Principal) are delegated the responsibility to deal with all other cases.
- 3.4 The LAB should nominate three of its members, who are not staff members to form the staff discipline/dismissal committee and a different three LAB members, to form the appeals committee.
- 3.5 The DSAT HR will offer advice at all stages of these procedures. It is strongly recommended that Principals (Executive Principal in cases of the Principal) seek advice from HR as early as possible.
- 3.6 As an employee faced with possible disciplinary action is likely to find the situation stressful, the Principal should make the employee aware of the wellbeing services available details will be provided from HR on request.

**4.****Raising a Grievance**

4.1 Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently. A discussion will therefore take place between school management, Human Resources and the employee (normally through their trade union representative or directly if they are not represented) about whether or not the disciplinary procedure should be suspended so that the grievance issues can be dealt with separately under the grievance procedure or whether the grievance should be raised by the employee at relevant disciplinary interviews, hearing or appeal.

4.2 Suspending the disciplinary procedure would normally take place when:

- I. the grievance relates to a conflict of interest that the investigator is alleged to have
- II. bias is alleged in the conduct of the disciplinary meeting
- III. there is an allegation that management have been selective in the evidence they have supplied to the investigator
- IV. there is possible discrimination.

**5.****What is misconduct?**

5.1 Misconduct involves an employee breaking specific rules about behaviour or conduct. It is conduct that falls below expected standards and is usually wilful. There may be occasions when negligent conduct amounts to misconduct.

5.2 Examples of misconduct include the following. This list is not exhaustive:

- I. misuse of school and / or DSAT facilities such as email, internet and photocopier
- II. poor time keeping
- III. unauthorised absences
- IV. failure to improve faults that build into a pattern of unacceptable behaviour, performance or attitude
- V. undermining the achievement of team, service or corporate goals
- VI. wilful failure to adapt to changing technologies, methods and patterns of work (as distinct from inability to adapt which is dealt with under the capability procedure)
- VII. insubordination
- VIII. any act or omission that might otherwise, if the context and impact were judged to be more serious, be dealt with as a matter of gross misconduct.

5.3 Gross Misconduct is a term used to describe serious misconduct, which may destroy the employment contract between the employer and the employee and make further working relationships and trust impossible. Examples of the sort of conduct that could be regarded as gross misconduct, rendering the employee liable to dismissal without notice, or payment in lieu of notice are:

- I. dishonesty, including theft, fraud or deliberate falsification of records or acceptance of bribes
- II. physical violence or bullying against other employees, pupils or members of the public

- III. deliberate and serious damage to school property
- IV. misuse of the school's property or name, or bringing the school into disrepute
- V. serious abuse of the school's computer equipment / software; including deliberately accessing internet sites containing pornographic, offensive or obscene material
- VI. inappropriate use, or misuse of ContactPoint (the Children's Information Sharing Index) for purposes other than those designated
- VII. serious insubordination, including serious act(s) or persistent repetition of a failure to comply with a reasonable instruction
- VIII. unlawful discrimination or harassment
- IX. being under the influence of illegal drugs or alcohol whilst at work
- X. causing loss, damage or injury through serious negligence
- XI. a serious breach of health and safety rules
- XII. a serious breach of trust and/or confidence
- XIII. breach of any professional code of conduct applicable to the job, which could bring the profession or the school or DSAT into serious disrepute
- XIV. serious negligence which causes or might cause unacceptable loss, damage or injury
- XV. a relevant criminal conviction that undermines the school and/or DSAT's confidence in the employee and/or undermines the employee's ability to undertake their work
- XVI. misuse of official position for personal gain

## Process for Formal Procedure

### Process for Formal Procedure

6.

### Misconduct – Formal Procedure

#### 6.1 Investigation

Where there is a complaint of misconduct that warrants formal investigation, the Principal or Executive Principal should arrange for a full investigation to take place, as soon as possible after the allegations have been made. It is not usually appropriate for the Principal or Executive Principal to carry out the investigation as they may be required to deal with the matter formally at any stage up to and including dismissal. The Principal or Executive Principal should therefore wherever possible nominate a senior member of staff to conduct the investigation. If the complaint is against the Principal and/or Executive Principal or the Principal and/or Executive Principal has been involved in the complaint, then the LAB or DSAT Board should undertake the investigation themselves or appoint someone else as appropriate.

## 6.2 Managing Child Protection allegations

- I. Where the allegations involve Child Protection and the alleged behaviour might be criminal, involve harm to a child or put a child at risk of harm, the Executive Principal must be notified immediately. Where appropriate a strategy meeting attended by Executive Principal, the Police, Social Care, HR Officer and the Principal (or designated governor where the allegation is against the Principal) will be convened.

## 6.3 Conducting the Investigation

- I. The aim of the investigation is to establish the facts of the case as quickly and thoroughly as possible.
- II. The employee must be informed formally and in writing:
  - a. that an investigation is taking place and that they will be given the opportunity to respond to the allegation(s) – date and time of meeting;
  - b. of the details of the complaint/allegation(s);
  - c. that they may be accompanied by a work colleague or trade union official, but not by a family member or relative to any meetings.

## 6.4 Suspension

- I. Where there appears to be serious misconduct or risk to property or other people, a period of suspension with pay should be considered while the case is being investigated. In accordance with the Education Act, either the Principal or Executive Principal or LAB (normally the Chair of the LAB) can suspend an employee at the school, but only the LAB and/or DSAT Board can lift the suspension. The Principal or Executive Principal and/or LAB must keep each other informed of any action they may take in relation to suspension. Advice must always be sought from an HR Officer before taking such action and in any event HR should be notified of any suspension from duty.
- II. Suspension with pay should only be imposed after careful consideration and should be reviewed to ensure it is not unnecessarily protracted. Suspension should not be regarded in any sense as a disciplinary measure or implying guilt, but as an exceptional measure to enable a proper investigation to take place.
- III. The employee will be invited to attend a meeting at which they will be informed of their suspension. The school will try to secure the attendance of the trade union representative at the suspension meeting. However, if the representative is unable to attend, the meeting will take place and the trade union representative will be briefed about the details of the suspension as soon as possible. If circumstances do not allow for a suspension meeting to be arranged, or if the employee is unwilling or unable to attend, the school will attempt to make contact by phone. In any event the employee will be informed by letter of the suspension and the reasons for this.
- IV. If an employee to be suspended is a trade union official, no steps in the procedure may be started until the circumstances have been discussed with a senior

representative or paid official of the trade union/professional association the employee will be advised of this action prior to any communication.

V. Suspension will always be on full pay.

- The decision to suspend and the reasons will be confirmed to the employee in writing by the school within 5 working days.

## 6.5

### Concluding the Investigation

- After the investigation is complete the person who conducted it will produce a report and decide whether or not there is a case to answer. The outcome of the investigation will be notified to the employee. If there is no case to answer, or the matter is regarded as trivial, then the matter may be dealt with by a Management Instruction and/or will be closed and the employee informed in writing. The Principal and/or Executive Principal may arrange counselling or take informal action.
- If it is decided that a Management instruction is to be issued, it will detail the wrong doing of the employee and how this can be put right in the future. It will also advise the employee that similar actions could lead to more formal action. A copy of the letter will remain on the employee's staff file. Management instructions cannot be appealed against.
- If there is a case of misconduct to answer which will require more than informal measures the matter will be referred to a formal disciplinary hearing before the Principal or Executive Principal or the staff discipline/dismissal committee of the LAB. The employee will be notified in writing.

## 7

### The Disciplinary Hearing

#### 7.1

#### Notification of a Disciplinary Hearing

- The Principal and/or Executive Principal is normally responsible for the arrangements for a disciplinary hearing conducted by the Principal and/or Executive Principal, and the Clerk to the LAB is normally responsible for the arrangements for formal hearings before the staff discipline/dismissal committee and/or DSAT Board. This includes notifying employees in writing of such hearings, giving at least 10 working days notice.
- The employee should be given details of the specific complaint/allegations and should be informed that either party can produce witnesses and/or written statements and relevant supporting documents at the hearing, should they so wish. An exchange of all documents expected to be referred to at the hearing should take place at least 5 working days before the hearing.
- The school will make provision for any reasonable adjustments to accommodate the needs of a person with disabilities at the meeting. The school needs to be informed of requirements at least 48 hours before the hearing.
- If their chosen companion cannot attend, an employee may offer a reasonable alternative time within five working days of the original date, unless mutually agreed otherwise.

## 7.2

### Witnesses

- I. If witnesses are called to give evidence their identity will be disclosed to the other party in advance, unless exceptional circumstances prevent this e.g. where anonymity is to be preserved.
- II. The other party will receive advance copies of written witness statements to which reference will be made at the hearing.

## 7.3

### Failure by the Employee to Attend

- I. An employee who cannot attend a meeting should inform the Principal and/or Executive Principal in advance whenever possible.
- II. If the employee fails to attend through circumstances beyond their control e.g. illness, the Principal and/or Executive Principal should rearrange the meeting to another date taking into account the reason. Sickness absence must be supported by a medical certificate.
- III. A decision to proceed may be taken in the employee's absence if they fail to attend the rearranged meeting without good reason. The employee should be notified of this possibility in advance in writing.

## 8.

### Procedure to be followed at the hearing

#### 8.1

##### Hearing

- I. the Manager investigating the allegation will set out their case after they have finished the employee or their representative can question the Manager. Once the employee or their representative have finished questioning the Manager the Hearing Panel will have an opportunity to question the Manager.
- II. the employee or their representative will then set out their case after they have finished the Manager can question the employee, their representative cannot answer questions on the employees behalf. Once the Manager have finished questioning the employee the Hearing Panel will have an opportunity to question the employee.
- III. both parties will then have an opportunity to sum up their case before and decision making takes place.

#### 8.2

##### Minutes

- I. notes of the hearing should be taken by a Clerk to the LAB or another suitable person as arranged by the school and copies of the notes circulated to all parties as soon after the meeting as practicable. The Clerk does not take any other part in the formal process.

### **8.3 Making the Decision**

- I. The Principal and/or Executive Principal or the disciplinary/dismissal committee will deliberate in private, with the HR Officer, only recalling the parties to clear points of uncertainty on evidence already given. If a recall is necessary both parties are to return even if only one is concerned with the point giving rise to doubt.
- II. The decision will be announced at the close of the hearing whenever possible. The Principal and/or Executive Principal or chair of the disciplinary committee will confirm the decision in writing within 5 working days of the hearing.

## **9. Possible Outcomes**

### **9.1 Case not Substantiated**

- I. If the hearing manager/panel or disciplinary/dismissal committee considers that the case against the employee is unfounded, the employee wherever possible will be informed of this at the close of the meeting and the decision will be confirmed in writing within 5 working days of the hearing.

### **9.2 Case Substantiated – Formal action**

- I. If the hearing manager/panel believes on the balance of probabilities that the alleged misconduct is substantiated, the appropriate disciplinary action will be determined, having regard to all the circumstances. Wherever possible, the employee will be informed of this at the hearing and the decision will be confirmed in writing within 5 working days of the hearing.

## **10. Disciplinary Sanctions**

### **10.1 Written warning**

- I. For a serious breach of conduct a written warning may be given with the reasons for the warning and any change in behaviour or improvements required. An action plan may be used to clarify. It will also advise that further action under the procedure will be considered if the change in behaviour or improvements required are not met and will also inform the employee of their right of appeal and to whom. A copy of the warning will be kept but will be disregarded for disciplinary purposes after 12 months, subject to continuous satisfactory conduct during this period.

## 10.2 Final written warning

- I. A final written warning, with the reasons for the warning and any change in behaviour or improvements required (an action plan may be used to clarify), may be given:
  - a. for a very serious offence which would be insufficient to justify dismissal but would warrant only one written warning;
  - b. For a very serious offence which would justify summary dismissal for gross misconduct, but a lesser penalty is appropriate in the circumstances; or
  - c. Where there is still a failure to improve conduct following previous written warning(s).
  - d. A final written warning will give the reason for the warning, advise that dismissal will result if there is no satisfactory improvement and state the right of appeal. A copy of the warning will be kept, but will be disregarded for disciplinary purposes after 24 months, subject to continuous satisfactory conduct during this period.

## 11. Dismissal

- I. For failure to improve or for act(s) of further misconduct after a final written warning has been given and remains live. Dismissal will be with notice or pay in lieu of notice.
- II. For act(s) of gross misconduct, dismissal will be without notice (summary dismissal). The decision to dismiss can only be taken after a hearing before the Principal and/or Executive Principal or disciplinary/dismissal committee of the LAB and/or DSAT Board, but may be taken before an appeal hearing takes place. In such cases pay will cease when the decision to dismiss is made and reinstated in full if an appeal is subsequently successful.
- III. In both cases above, the employee will be provided as soon as reasonably possible with written notice of dismissal, the date on which the contract is to end, the appropriate period of notice (if notice is to be given), the reason for dismissal and the right of appeal.

## 12. The Appeal Process

### 12.1 Right of Appeal

- I. An employee may lodge an appeal in writing against any formal disciplinary action taken against them under this procedure to the Clerk to the LAB within 5 working days of the date on which they receive the confirmation of the disciplinary action.
- II. The letter of appeal from the employee should state the reasons for appealing from one of the three below:
  - a. the employee disagrees with the disciplinary sanction;

- b. it is alleged that the disciplinary procedure has been applied defectively or unfairly;
- c. new evidence has come to light which was not available at the disciplinary hearing and which may make a difference to the original decision;

III. The appeal will be heard by the appeals committee of the LAB and/or DSAT Board as soon as possible after receipt of the request. The LAB and/or DSAT Board must call request the HR Officer to be in attendance in an advisory capacity only;

IV. Evidence presented to the appeals committee must relate to any of the three reasons stated above and must enable the assessment of whether or not the allegations against the employee were accurate, justified and substantiated and whether the disciplinary action was appropriate in all the circumstances. The appeal may either be a review of the disciplinary sanction or a re-hearing depending on the grounds of the appeal.

## 12.2 **Notification of Appeal Hearing**

- I. The Clerk to the LAB and/or DSAT Board is normally responsible for the arrangements for formal hearings before the appeals committee. This includes notifying employees in writing of such hearings, giving at least 10 working days' notice, and informing them in writing of their statutory right to be accompanied at the meeting by a workplace colleague or trade union representative but not family member or relative.
- II. An exchange of all documents expected to be referred to at the hearing should take place at least 5 days before the hearing, paying particular attention to any new evidence that is going to be introduced.
- III. The school will make provision for any reasonable adjustments to accommodate the needs of a person with disabilities at the meeting. The school needs to be informed of requirements at least 48 hours before the hearing.
- IV. If their chosen companion cannot attend, an employee may offer a reasonable alternative time within 5 days of the original date, unless mutually agreed otherwise.

## 12.3 **Procedure to be followed at the Appeal Hearing**

- I. Hearing
  - a. the Manager investigating the allegation will set out their case after they have finished the employee or their representative can question the Manager. Once the employee or their representative have finished questioning the Manager the Hearing Panel will have an opportunity to question the Manager.
  - b. the employee or their representative will then set out their case after they have finished the Manager can question the employee, their representative cannot answer questions on the employees behalf. Once the Manager have finished

- questioning the employee the Hearing Panel will have an opportunity to question the employee.
- c. both parties will then have an opportunity to sum up their case before and decision making takes place

II. Minutes

- a. Notes of the hearing should be taken by a Clerk to the Governing Body or another suitable person as arranged by the school and copies of the notes circulated to all parties as soon after the meeting as practicable. The Clerk does not take any other part in the formal process.

III. Making the Decision

- a. The appeals committee will deliberate in private, with the HR Advisor, only recalling the parties to clear points of uncertainty on evidence already given. If a recall is necessary both parties are to return even if only one is concerned with the point giving rise to doubt.
- b. The decision will be announced at the close of the hearing whenever possible. The chair of the appeals committee will confirm the decision, with reasons, in writing within 24 hours of the hearing.
- c. The decision can be confirmation or overturning of the original decision, or the issue of a lesser penalty. The decision at appeal is final.

### 12.3 Written Records

- I. A record of the documentation relating to the case will be retained and will include:
  - a. the complaint / problem against the employee
  - b. the employee's views / defence
  - c. any grievances raised during the disciplinary process
  - d. findings made and actions taken
  - e. the reason for actions taken
  - f. whether an appeal was lodged
  - g. the outcome of the appeal
  - h. subsequent relevant developments
  - i. notes of any formal meetings
- II. Records will be treated as confidential and be kept in accordance with the Data Protection Act 1998 so that an employee has the right to request and have access to relevant information but, in certain circumstances (for example to protect a witness) the School may consider it appropriate to withhold some information.
- III. A warning will be disregarded for disciplinary purposes after the following periods from the date of the hearing when the warning was issued, providing there has

been satisfactory conduct and unless a Head Teacher / Manager / Governor(s) decide(s) to increase these time limits (see paragraph below):

- a. Written warning – 12 months
- b. Final written warning – 24 months

- IV. There may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where a pattern emerges and/or there is evidence of abuse, the employee's disciplinary record should be borne in mind in deciding how long any warning should last.
- V. No disciplinary records relating to the safety and welfare of children and young people will be withdrawn from an employee's personal file for holders of posts covered by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Whilst the warning will remain on file, it is not 'live' and will only be taken into account if it is relevant and reasonable to do so in the context of the responsibility for the protection of children.
- VI. An employee who works in the provision of services to children and is dismissed, or who resigns in circumstances relating to the safety and welfare of children and young people which may have led to dismissal, will be referred to the Vetting and Barring Scheme (VBS) of the Independent Safeguarding Authority (ISA) by HR.
- VII. On behalf of the School, HR will also refer on to the General Teaching Council (GTC) those misconduct cases relating to registered teachers, which do not raise issues relating to the safety and welfare of children and young people.

### **13. Related policies and other information**

See other HR policies referred to at **2.2** where these are more relevant to the issues raised including:

- I. Capability Policy and Procedure
- II. Ill health Policy and Procedure
- III. Dignity at Work Policy;
- IV. Whistleblowing Policy and Procedure