

Disciplinary procedure

This procedure sets out the process for dealing with disciplinary matters for all employees working for Consilium Academies.

The procedure was approved by the Trust Board of Directors on 20 March 2018 and will be reviewed annually.

1. Introduction

- 1.1 Consilium Academies are committed to providing a high quality education for their pupils. In order to achieve this, it is expected that the conduct and performance of all employees will be of the highest standard. The expected standards of behaviour are set out in the attached disciplinary rules (appendix 1) and other supplementary documents and policies including; the teaching standards, the grievance and dignity at work policy, keeping children safe in education and all other appropriate legislative requirements.
- 1.2 This procedure is intended to follow best practice in line with the ACAS Code of Practice on Discipline and Grievance. This procedure is also in line with the Equality Act 2010.
- 1.3 While the procedure should be completed as promptly as practical, it also needs to be sufficiently thorough to be fair and reasonable.
- 1.3 The aim of the procedure is to provide a mechanism for dealing with disciplinary matters and to ensure that as far as possible, disciplinary action is consistently and equitably.
- 1.4 This procedure is not concerned with issues relating to sickness or capability issues, for which separate procedures exist.
- 1.5 If the alleged breach of conduct is in relation to a potential safeguarding of children matter then the Local Authority Designated Officer (LADO) must be informed immediately and prior to any disciplinary process commencing.
- 1.6 Where an employee raises a grievance during a disciplinary process the procedure may be temporarily suspended in order to deal with the grievance. Where the disciplinary and grievance cases are related it may be appropriate to deal with both issues concurrently.
- 1.7 If an employee is absent due to sickness whilst the disciplinary procedure is ongoing then advice will be sought regarding their fitness to attend meetings in relation to the process from Occupational Health.
- 1.8 This policy does not form part of an employee's contract of employment and it may be amended at any time subject to consultation and negotiation with recognised trade unions.

2. Informal action

- 2.1 First time incidents of minor misconduct are usually best dealt with informally and promptly without the need for formal action to be taken. A record of the informal discussion may be made, by mutual consent, for the benefit of both parties. This should not be held on the personal file. Recommendations may be made to support the employee in correcting their behaviour such as; issuing management advice and guidance, reissuing policies and guidance or additional training/coaching. Employees need to be clear what action will be taken if they fail to improve. The employee does not have the right to be represented at this informal stage. There is no right of appeal against such informal action.

3. Suspension

- 3.1 Where an allegation has been made of a serious nature which may potentially result in the termination of the employee's contract, the employee may be suspended (if this action is taken

it will be on contractual pay). This may be necessary to allow a full and fair investigation to take place or, for example, in cases where criminal proceedings are pending.

- 3.2 Suspension does not imply guilt, nor is it a disciplinary sanction but, equally, because of the potential impact on the employee's career, it is not a neutral act. It should only be imposed if no alternatives to suspension (such as moving the employee temporarily to an alternative role) are considered appropriate. It is recommended that advice is sought from Human Resources prior to making the decision to suspend.
- 3.3 If the decision is made to suspend then the employee should be invited to a meeting with an appropriate manager, normally in the case of school based employees this would be the Headteacher or Chair of Governors, and offered the right to representation by their trade union representative or a work colleague. In some circumstances this meeting will be conducted by a senior member of the school or the wider trust. If the representative is not available then consideration may be given to postponing the meeting for a short period but no later than the following morning.
- 3.4 A suggested format for the meeting is attached at appendix 9. The employee should be informed of the reasons why they are being suspended and of the terms of their suspension. Employees must make themselves available for investigatory meetings and abide by the terms of the suspension. The suspension should be confirmed in writing, a template letter is attached at appendix 10. Suspension is not a form of disciplinary action and there is no right of appeal.
- 3.5 Suspension should be for as short a period as possible and reviewed periodically as the investigation progresses. If it is found that there is no case to answer or that the allegations are not as serious as they initially appeared to be then the suspension should be lifted and confirmed in writing. Suspension can only be lifted by the Chair of Governors, a member of the Trust Executive Team or a Trustee. Being suspended can be extremely difficult for employees and they should be made aware of any support mechanisms available to them during this period. This will include Occupational Health (who are also able to provide counselling support) and a nominated point of contact in agreement with the employee being suspended.
- 3.6 If the employee is absent/becomes absent due to sickness prior to or after the decision is made to suspend then the terms of suspension will be applied. A template letter is attached at appendix 11.

4. Formal action

- 3.1 For incidents of gross misconduct or when misconduct is deemed too serious to be dealt with informally, the formal disciplinary procedure will be applied.

3.2 Investigation

Before any formal disciplinary action is taken a full investigation will take place by an appropriately trained senior manager (the investigating officer) with no previous involvement in, or connection to the case and without unreasonable delay in order to establish the facts and determine if any further action is required. This may involve interviewing witnesses and collecting any relevant documentary evidence.

Where appropriate, statements should be obtained from any available witnesses and signed to

indicate that they are an accurate record. It is important that all employees co-operate fully with any investigation. It is also important that, when pupils are witnesses to incidents, where possible they are interviewed separately on the same day that the incident occurred, before their recollections fade and to avoid collusion. Advice should be sought from the designated safeguarding/child protection lead prior to any such interviews involving children taking place.

The investigatory interview is a vital stage in the disciplinary procedure. The purpose is to establish the facts of the case on the evidence available. Based on this information, the investigating officer will make a decision about whether to proceed to a formal disciplinary hearing. The role of the investigating officer is to present a balanced view of the facts of the case and they should avoid drawing conclusions or making recommendations for disciplinary sanctions in any subsequent reports.

The employee will be invited to an investigatory interview in order to establish the facts of the case in relation to the alleged breach of conduct. They should be given advance written notice of the investigatory interview and its purpose. They have the right to be accompanied by a professional trade union representative or a work colleague. The employee should be given sufficient information to prepare for the meeting at each stage of the investigation of the nature of the matter under investigation but it may not be possible at this stage to be specific about the exact nature of the allegations until the investigation stage is complete. A copy of a standard letter inviting an employee to an investigatory interview is attached as appendix 3.

It may be necessary to hold a number of investigatory interviews as new evidence emerges. However, it is important that the employee is made fully aware at the end of each investigatory interview what the next stage may be i.e.

- That further witnesses need to be interviewed
- That there is insufficient evidence and the investigations are concluded
- That informal action will take place
- That a disciplinary hearing will be convened.

It is important that the investigations are concluded as quickly as possible to avoid any undue stress being caused to the employee and the witnesses. However, it needs to be sufficiently thorough to be fair and reasonable.

3.3 Disciplinary Hearing

If it is determined that an employee should be required to attend a disciplinary hearing, the employee should receive at least 10 days' notice of the disciplinary hearing. The employee will receive notification in writing of the full allegation(s), be given copies of all the original documentary evidence to be used at the hearing and notified of their right to be accompanied by a trade union representative or an appropriate work colleague. With the agreement of the employee, copies will also be provided to their representative. A template invite letter is attached at appendix 4.

It is expected that the employee will also provide the investigating officer with any documentation they intend to refer to at the hearing and the names of any witnesses they intend to call at least 5 days prior to the hearing.

If the employee advises that they, or their representative, cannot attend on the given date, the hearing will normally be rescheduled, which should be within 5 working days of the original date. Where a date has already been rescheduled once at the employee's request and they request

a further rescheduled date, depending on the individual circumstances, they may be advised that the hearing will proceed in their absence on the date given if they do not attend. Every effort will be made to hold the hearing on a mutually agreed date.

A hearing officer will be appointed to hear the facts of the case and make an appropriate decision. It is recommended that, for school based employees, the Headteacher is appointed hearing officer, unless they have been involved in the case or they are the subject of the investigation, or in cases where dismissal is a possible outcome, in which case a panel will be convened. Consilium Academies reserve the right to appoint a hearing officer or panel member from within the wider trust if this is deemed appropriate. For central trust employees, an appropriate senior manager with no previous involvement in the case will be appointed hearing officer.

The investigating officer will prepare a report outlining the facts of the case as determined from the investigation, which they will present at the hearing. During the hearing 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, present a written statement (should they wish to do so) and call relevant witnesses.

The role of the person accompanying the employee is not to answer questions on behalf of the employee, however, they will be allowed to make an opening statement, take notes, ask questions to present evidence, call relevant witnesses, ask for reasonable adjournments and make a closing statement.

The procedure to be followed at the hearing is attached at appendix 5.

If the allegations are proven then the hearing officer/panel may decide that formal action is required. If this is the outcome then the employee will receive a written explanation of the decision taken and the reasons for this decision, a copy of this letter will be retained on the employee's personal file. Except where the outcome is dismissal, the employee will also be informed of any improvements or change expected and advised that any further incidents of misconduct or failure to improve will result in further disciplinary action being taken, which could result in dismissal and advised how long the warning will remain "live" for disciplinary purposes. The employee will also be notified in writing of the right to appeal against the decision. A template letter is attached at appendix 6.

4. Disciplinary action

4.1 Following on from a disciplinary hearing, the following action may be taken depending on the circumstances of the case:

No case to answer/allegations not proven

No formal action will be taken although there may be recommendations made, for example amendments to policies/procedures or additional training for the employee.

Initial written warning

If their conduct or behaviour is unsatisfactory, the employee may be given a written warning. The warning will be considered to be disregarded for disciplinary purposes after 6 months satisfactory conduct from the date of the warning.

Final written warning/first and final written warning

If there is further misconduct following an initial written warning, or a failure to improve conduct or behaviour to the required level whilst the prior warning is still “live”, a final written warning may be issued. If there is no ‘live’ warning on file but the matter is deemed sufficiently serious then a first and final written warning may be issued. These warnings will be considered to be disregarded for disciplinary purposes after 12 months satisfactory conduct from the date of the warning.

Dismissal with notice

If following a period of support and training provided to the employee there has been a further incident of misconduct whilst the prior final or first and final written warning is still “live”, the employee may be dismissed with notice (all staff) or pay in lieu of notice (NJC staff only unless agreed with employee subject to School Teachers Terms and Condition and agree at point of dismissal).

No employee will be dismissed for a first breach of discipline except in cases of gross misconduct.

If following a panel hearing the initial decision is to dismiss an employee the school/trust will confirm that decision in writing, stating the right and procedure for appeal.. The effective date on which a dismissal should take place and notice periods applied, as appropriate, will be the date on which the employee was informed of the decision to dismiss.. The employee will be reinstated should any submitted appeal be successful and any gaps in contractual pay and pension contributions will be reimbursed.. The employee shall have the decision of the disciplinary hearing confirmed in writing including details of appeal within 5 days. A copy of a standard letter, which may be used, is attached at Appendix 7.

Summary dismissal

Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. A fair disciplinary process, including a full investigation, should always be followed before dismissing for gross misconduct. Examples of potential gross misconduct are provided in the attached disciplinary rules. The effective date of termination of employment will be the date the employee was informed they had been dismissed.

Action short of dismissal

If there are any extenuating/exceptional circumstances an alternative to dismissal, may be considered at any time during the investigation process. This may include demote or transfer to an alternative post by mutual agreement. Such action may also be combined with the issuing of a final written warning.

5. Appeals

- 5.1 The employee has the right to appeal against a decision involving any formal disciplinary action, including dismissal.
- 5.2 The employee should notify the original hearing officer in writing, of their intention to appeal, within 10 days of receipt of the initial decision, outlining the reason for the appeal. The grounds

for appeal may include, for example, the severity of the punishment, perceived unfairness of the judgment, new significant evidence coming to light, or alleged procedural deficiencies.

- 5.3 Appeals are a re-hearing of the case at the previous stage excluding consideration of any allegations which were not found proven. Where the facts of the case are not in dispute, or there are no procedural issues arising from the conduct of the original hearing, but only the severity of the penalty is at issue, then both sides may agree a statement of facts to be jointly submitted in evidence and a full rehearing will not be necessary.
- 5.4 Appeals will be heard by a panel with no previous involvement. (it is recommended that 3 members constitute this panel). This would normally be drawn from the school governing body for school based staff. Consilium Academies reserve the right to appoint an appeal hearing officer or panel member from within the wider trust if this is deemed appropriate.
- 5.5 New evidence may only be introduced where it is significant and was not previously available to either side. In such situations it must be disclosed at least 5 days prior to the appeal hearing. If the employee provides new evidence the appeal hearing officer/panel may request the appeal be adjourned to enable further investigations and a review of the original decision to take place.
- 5.6 If an employee appeals against a dismissal decision and is successful then the employee will be reinstated.
- 5.7 The decision made at the appeal will be confirmed in writing to the employee, without unreasonable delay, and will be final with no further internal right of appeal. A template letter is attached at appendix 8.

6. Trade union officials

- 6.1 Although normal disciplinary standards should apply to their conduct as employees, no formal disciplinary action is to be taken against an accredited representative of a trade union or teachers association until the circumstances of the case have been discussed with a senior trade union representative or full-time official of the trade union or the teacher's association concerned.

7. Reporting to external bodies

- 7.1 There is a legal requirement for the trust to make a referral to the Disclosure and Barring Service (DBS) where it is believed that an individual has engaged in conduct (including inappropriate sexual conduct) that harmed (or put at risk of harm) a child or vulnerable adult, or if an individual otherwise poses a risk of harm to a child or vulnerable adult, or if an individual has been cautioned or convicted of a relevant offence.
- 7.2 In such circumstances, the duty to refer an individual to the DBS arises where the individual has been removed from relevant work with children or vulnerable adults or the person has chosen to cease relevant work in circumstances where they would have been removed had they not done so (eg resigned).
- 7.3 There are other situations where a referral to the DBS may also be made, for example, if following an internal investigation there is insufficient evidence to show relevant conduct occurred, but it is considered that the risk of harm to a child or vulnerable adult exists.
- 7.4 The DBS will consider whether to bar the person from working in regulated activity.
- 7.5 An employer has a statutory duty to make reports, and to provide relevant information to the

DBS. Referrals should be made as soon as possible after the resignation or removal of the employee involved. In addition, the trust must make a referral to the DBS as soon as it is aware that an employee who works with children or vulnerable adults in regulated activity has been cautioned or convicted for a relevant offence.

- 7.6 Employers have a statutory duty to consider referral of cases involving serious professional misconduct of teachers to NCTL. Where a teacher's employer has dismissed the teacher for misconduct, or would have dismissed them had they not resigned first, they must consider whether to refer the case to NCTL. Further information can be found at <https://www.gov.uk/guidance/teacher-misconduct-referring-a-case> or from Human Resources.

Appendix 1 – Disciplinary rules

Gross misconduct

Gross misconduct is conduct by an employee of such a nature that it fundamentally breaches the contract of employment and leaves no trust or confidence in the employee. If proven, allegations of gross misconduct may result in the termination of an employee's contract of employment with Consilium Academies.

The following list provides some examples which are normally regarded as gross misconduct. This list is not exhaustive therefore it does not preclude the possibility of dismissal for other offences of similar gravity not specified:

- Theft, fraud, corruption or embezzlement in relation to their employment.
- Physical violence or serious cases of bullying or harassment of employees, pupils or members of the public.
- Deliberate and serious damage to property.
- Serious misuse of the trust's property, name or resources.
- Falsification of time records, travel, subsistence and expenses claims etc
- Deliberate falsification of pupil data.
- Using trust equipment to deliberately access internet sites containing pornographic, offensive or obscene material.
- Gross insubordination.
- Unlawful discrimination or harassment.
- Bringing the trust or school into serious disrepute.
- Being charged with a criminal offence that has serious implications on their suitability to do their job.
- Serious incapability at work brought on by alcohol or the mis-use of drugs.
- A serious breach of health and safety rules.
- Gross negligence in failing to attend to, or carry out, the normal agreed duties of the job in which the safety of pupils or their education is put at risk as a consequence.
- Causing harm to, or placing at risk of harm, a child or vulnerable adult.
- Causing loss, damage or injury through serious negligence.
- Sexual offences and sexual misconduct.
- Wilful, unauthorised disclosure of information classified as strictly confidential which could be harmful to the Trust or its employees and associated parties eg personal information on employees, schools, pupils etc. Other than a protected disclosure under section 43a of the Employment Rights Act 1996.

- Use of information obtained in the course of employment for personal gain or for others personal gain.
- A failure to adhere to policies, guidance and training relating to the safeguarding of children, for example; the school behaviour policy and the DfE keeping Children Safe in Education guidance, which results in serious harm or may have resulted in serious harm to pupils.
- Serious breaches of the Teaching Standards (applicable only to teachers)

In each case the circumstances and context of the allegation should also be taken into account.

Misconduct

Misconduct is conduct/behaviour which breaches the general standards/rules related to conduct. If found proven, allegations relating to misconduct may lead to up to a first and final written warning being issued. In some cases where the employee has been issued with a final written warning which is still live, if proven, the allegations could lead to the termination of the employee's contract with Consilium Academies. Only when the disciplinary procedure has been exhausted will misconduct lead to dismissal, unless there are mitigating circumstances.

The list of examples below is not intended to be exclusive or exhaustive and offences of a similar gravity will receive the same treatment:

- Failure to remain at work during working hours without permission or sufficient cause of absence.
- Frequent unauthorised failure to attend work punctually.
- Failure to notify absence due to sickness in accordance with the agreed procedures.
- Failure to provide medical certificates when required.
- Unauthorised absence (except where legally entitled).

NB – Requests for leave of absence can be made via the appropriate absence policy.

- Unauthorised personal use of premises, equipment, machinery or vehicles.
- Unauthorised use of e-mail, the internet/intranet for personal purposes.
- Installation or use of unlicensed or unauthorised software on trust computer equipment.
- Failure to wear protective clothing, use protective equipment or adopt safe working practices where required to by law or management.
- Purposeful failure to make an entry, where it is the employee's normal duty to make in any book, document or record.
- Negligent use of trust property or property leased or hired by the trust, in such a way as is likely to cause serious damage or loss.
- Failure to discharge, without sufficient cause, the normal obligations which statute or the contract of employment places on the employees.

- Failure to follow procedures for reporting accidents at work, violence to staff or other notifiable occurrences.
- Insubordination - being deliberately disobedient and failing to carry out a reasonable instruction issued by a line manager or use of offensive language against a line manager
- Bullying, victimisation, intimidation or harassment of other employees, clients, governors/management committee members or members of the public in the course of employment.
- Threatening or abusive behaviour and/or offensive language which arises directly out of or in connection with employment and which is directed at senior staff, colleagues or members of the public.
- Knowingly being an accessory to a disciplinary offence.
- Making a malicious complaint of harassment and bullying against another employee.
- Refusal to co-operate with any formal internal investigation without good cause.
- Undertaking paid or voluntary work or any other conduct outside normal working hours whilst absent from duty due to sickness which could prejudice return to work.
- Knowingly Fail to disclose financial or non-financial interests which could conflict with the school's interests.
- Undertaking additional employment or activity outside normal working hours which would be detrimental to the obligations of the employee to satisfactorily perform their duties or which conflicts with the trust's interests and which could/has resulted in adverse consequences.
- Breach of trust policies and procedures without good cause.
- Failure to adhere to policies, guidance and training relating to the safeguarding of children, for example; the school behaviour policy and the DfE keeping Children Safe in Education guidance.
- Breaches of the teaching standards (applicable only to teachers)
- Failure to notify the trust at the earliest opportunity if they are facing criminal charges of any kind.

Every attempt will be made to take into consideration the context and circumstances of the incident/allegation as part of the investigation process. Where there is clear mitigating evidence this will be included in the decision made by the Hearing Officer.