

Disciplinary Policy

Audience:	REAch2 Staff Local Governing Bodies
Ratified:	REAch2 Finance and Resources Committee May 2024
Other related policies:	Capability Data Protection Dignity at Work Equality & Diversity Managing Sickness Absence Safeguarding Speak Up and Whistleblowing Staff Code of Conduct
Policy owner:	Sue Northend, Director of Finance
Review:	May 2027

At REAch2, our actions and our intentions as school leaders are guided by our Touchstones.



Leadership

Finding the leader in all of us.



Inclusion

Realising the greatness in our difference.



Learning

Creating exceptional opportunities for learning.



Enjoyment

Loving what we do.



Inspiration

Feeling the power of the possible.



Integrity

Being courageously true to our purpose.



Responsibility

Unwavering commitment to seeing things through.

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Policy Overview

Overarching Principles

The Trust is committed to providing an environment where employees can perform their roles to the best of their ability and are proud of the willingness and commitment that exists in the organisation to deliver outstanding services.

This policy has been developed to ensure fair and consistent treatment across the Trust where conduct falls below the standards required. Clear guidance about the standards of behaviour expected and any rules that need to apply across the Trust are provided to employees in the Staff Code of Conduct.

Intended Impact

This aim of the policy is to help and encourage all employees to achieve and maintain appropriate standards of conduct and work to:

- improve conduct primarily by informal advice and support;
- provide a fair and equitable method of dealing with alleged breaches in standards of conduct.

Scope

This policy applies to anyone employed by the Trust in a permanent, fixed term or temporary post.

It will be applied fairly and in accordance with employment law and REAch2's Equal Opportunities policies.

Roles and Responsibilities

Employee's responsibilities:

- To have a personal responsibility to maintain appropriate standards of professional conduct;
- To familiarise themselves with the Disciplinary Policy;
- To familiarise themselves with their job description, standards of work and conduct including their terms and conditions of employment, REAch2 policies and any relevant standards or rules relating to their role, or employment;
- To behave in a way that promotes a positive working environment;
- To co-operate with the disciplinary process including being available for meetings, providing a statement and/or documents and attendance at hearings;
- To provide evidence, or act as a witness, if required.

Line Manager's responsibilities:

- To make sure that all employees are treated fairly, reasonably and consistently under this policy;
- To ensure that all employees have access to the Disciplinary Policy;

- To ensure that staff are aware of what is expected of their role and standards required;
- To bring any matter of potential misconduct to the employee's attention as soon as possible;
- Where an investigation is required, that this is undertaken in a fair and timely manner
- To give full and fair consideration to any appeal;
- To ensure the Designated Safeguarding Lead / Trust's Safeguarding Team has been notified if a matter concerns a safeguarding issue against a member of staff;
- To ensure employees receive adequate supervision and advice in connection with their work to enable them to achieve and maintain the required standards of conduct.

People Team responsibilities:

- To advise line managers at each stage of the formal procedure, this will include supporting managers during formal investigations, disciplinary hearings and appeals;
- To support line managers to consider options taking equality, precedence, risk, legal and practical considerations into account before any final decision on appropriate action;
- To monitor the application and outcomes of the procedure to ensure it is applied in a fair and consistent way across the Trust;
- To monitor and record the outcomes of action taken under the formal stages of the procedure

Policy Principles

- This policy is non contractual and may be varied by the Trust following consultation with the recognised Trade Unions;
- The Trust is committed to working positively with Trades Unions at all stages of this policy;
- The Trust expressly reserves the right to depart from the terms of the disciplinary procedure in circumstances where the employee does not have two years' qualifying service;
- This policy may be implemented at any stage as appropriate for the alleged misconduct;
- Unless the matter is deemed to be an act of gross misconduct, it is unlikely that an employee will be dismissed for a first breach of discipline;
- Employees have the right to appeal against any disciplinary action;

This policy does not apply where there are matters of:

- Competence or capability which is dealt with under the Capability Policy, unless it is clear that the employee is capable of reaching the required standard and has actively not done so;
- Ill health which is dealt with under the Managing Sickness Absence policy unless there is good reason to believe that the absence or ill health are not genuine;
- Bullying, harassment, discrimination and/or victimisation which are dealt with in the first instance under the Dignity at Work policy.

Employers and employees should raise and deal with issues promptly and informal action will be considered, where it's appropriate.

If formal action is taken, the employee will be advised of the nature of the allegations in writing and will be given the opportunity to state their case before any decision is made at a disciplinary hearing.

The Trust encourages the participation of trades unions at the informal stage and the investigation stage of this policy for the support they can offer to identify solutions and to prevent escalation.

Employees have the right to be accompanied by a trade union representative or work colleague at all formal stages of this procedure. They may be accompanied at the informal stages and at investigation stage. If the employee's chosen representative is not available at the time proposed for a hearing by the employer; a request can be made to re-schedule it to take place within the following 5 days. If an employee fails to attend the re-arranged hearing, and there is no justification for this, their case and/or representation may be considered by management in their absence, based on the written submissions.

Timescales are expressed in working days. For all employees, a working day should be regarded as a day that they would normally be required to attend for work.

Where a disciplinary case arises just before a school holiday, arrangements to resolve the matter as expeditiously as possible should be discussed between the parties. A school holiday should not itself be a cause for an undue delay in resolving the case.

The term "disciplining manager" refers to the Head Teacher or other manager.

The term "investigating officer" refers to the individual responsible for carrying out the investigation. This may be the Head Teacher or manager who is conducting the disciplinary procedure, however, in some instances this may be an independent investigator appointed to undertake the investigation.

Policy In Detail

Every effort should be made, wherever possible, to resolve potential disciplinary issues informally. In many cases, the right word at the right time and in the right way may be all that is needed.

This can be done by way of an informal meeting with the employee and following up what has been discussed / agreed in writing by an informal file note. There may be occasions when it is more appropriate to issue a management expectation letter to avoid any confusion about what standards of conduct are expected.

The employee may submit a written statement, or explanation, if they wish to be kept on file. Repeated misconduct after an informal meeting would normally lead to disciplinary action in accordance with this procedure.

All informal file notes as well as any management expectation letter, will be removed after 3 months and in line with General Data Protection Regulations (GDPR), unless if it relates to a safeguarding concern.

There is no appeal against the informal process of this policy.

Low Level Concerns

There are occasions where an incident occurs, which does not meet the harms threshold but may be significant enough to warrant action. The Keeping Children Safe in Education guidance describes such occasions as low level concerns.

For the purposes of this policy, a low-level concern is defined as a concern relating to behaviour that is inconsistent with our academy's Code of Conduct, but does not meet the threshold for an allegation of abuse or is not considered serious enough to consider a referral to the LADO, as outlined in Keeping Children Safe in Education (2023)

Examples of such behaviour could include, but are not limited to the following:

- being over friendly with children;
- having favourites;
- not maintaining professional boundaries;
- taking photographs of children on their mobile phone;
- engaging with a child on a one-to-one basis in a secluded area or behind a closed door;
- using inappropriate sexualised, intimidating, or offensive language.

The Trust's Safeguarding policy should set out the procedure for responding to reports of low-level concerns. If the concern has been raised via a third party, the Head Teacher should collect as much evidence as possible by speaking:

- directly to the person who raised the concern, unless it has been raised anonymously;
- to the individual involved and any witnesses.

The information collected will help the Head Teacher/manager to categorise the type of behaviour and determine what further action may need to be taken. This needs to be recorded along with the rationale for the decisions and action taken.

Safeguarding Concerns

Where the matter concerns a safeguarding issue, i.e. there is a concern regarding the conduct of an employee in respect of a child, the Head Teacher/manager will ensure that the Local Authority Designated Officer (LADO) /and the Trust's Safeguarding and People Teams are made aware, if they are not already aware by other means.

No action should be taken until the LADO has offered advice. At this stage, the employee should not be told that the matter has been raised in order to avoid the employee from discussing the issue with the child before the child has been spoken to by the appropriate officers. It is important that hasty decisions to suspend an individual are not made before any assessment has been made as to the substance of an allegation. This can be a traumatic experience for the employee concerned and the child and must be managed carefully and efficiently.

Any LADO safeguarding and employment investigations may run at the same time or jointly, where possible and appropriate. Employment investigations need not wait until after the resolution of any safeguarding concerns (unless there are on-going police enquiries in which case, the People Team will advise the appropriate way to proceed). Safeguarding actions, however, must take priority until risks are satisfactorily managed.

Alleged Criminal Activity

An employment investigation may run in parallel to a police, audit and/or child protection investigation, and should not be held up by any such investigations unless considered prejudicial to those investigations to proceed. It is not always necessary to await the outcome of any court hearing before deciding on disciplinary action.

Right to be accompanied

Employees have the right to be represented at all formal meetings under this procedure by a recognised trade union, or a workplace colleague. The employee may request representation at an informal meeting and at investigation. The representative has the right to speak on behalf of the

employee, state their case, and summarise the points made. The representative cannot answer questions on behalf of the employee.

A companion is allowed reasonable time off from duties, without loss of pay, but no one is obliged to act as a companion if they do not wish to do so. If the choice of companion is unreasonable, the school may ask for the employee to choose someone else. For example:

- If, in the school's opinion, the employee's companion may have a conflict of interest or may prejudice the hearing;
- If the companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days afterwards.

The school may, at its absolute discretion, allow the employee to bring a companion who is not a work colleague or union representative, if this will help the employee overcome a disability and providing there is no conflict of interest.

It is the responsibility of the employee to arrange for their representative to attend.

Suspension

Suspension is, in no way, a disciplinary sanction and carries no assumption of guilt. However, suspension will be considered when:

- working relationships have severely broken down;
- the employee could tamper with evidence, influence witnesses and/or sway the investigation into the allegation there is a risk to pupils, employees or property;
- the employee is the subject of criminal proceedings which may affect whether they can do their job.

During suspension, employees will continue to receive their full pay and the period should be as brief as possible and kept under review.

Managers will consider alternatives to suspension such as a temporary change to duties, working arrangements or a transfer of workplace. In the case of an employee losing accreditation, REAch2 will make every effort to place the individual in another post in the first instance.

Suspension will be confirmed in writing within three working days of the suspension meeting.

The employee will be provided with a named contact to direct any queries towards during their suspension and arrangements will be made to keep in touch with a suspended employee, e.g. to keep them informed as to the progress of the investigation, while they are away from work.

Where the Headteacher is suspended, only the National Director of Education has the power to do so and must notify the full governing board.

REAch2 recognises that being suspended can be an anxious time for an employee and support from counselling services and other services may be provided – this may include a referral to the Occupational Health service. Employees should be encouraged to consult with their professional association/trade union for support as well.

Formal Process

Formal disciplinary action may be taken in the cases of misconduct and gross misconduct.

Misconduct

Examples of which include but are not limited to:

- breach of health and safety rules or procedures (some major breaches may constitute gross misconduct);
- engaging in activities or conduct that places an individual, e.g., a child, at risk, including the inappropriate disclosure of confidential information;
- lateness and poor timekeeping;
- inappropriate or excessive personal use of school property and/or equipment or a failure to report damage to school property and/or equipment as soon as possible;
- breaches of school and the Trust's policies;
- failure to follow a clear management request/instruction; (note that some cases may constitute gross misconduct);
- inappropriate conduct towards other employees, parents, clients, visitors;
- unauthorised absence from work (note that some cases may constitute gross misconduct);
- wilfully aiding or encouraging other employees to breach rules or procedures or to perform other acts of misconduct;
- any other acts the Trust deems to be misconduct.

Gross Misconduct

Dismissal without notice (summary dismissal) will only be given for gross misconduct, which may include, but is not limited to, the following:

- dishonesty, including falsification of statutory or school documents;
- dangerous practice or infringement of safety rules, which may or may not result in injury or endanger health and safety;
- aggressive, abusive or indecent behaviour;
- some cases of refusal to carry out reasonable requests made by a manager;
- theft or attempted theft;
- serious cases of neglect of duty;
- wilful damage to property;
- unauthorised disclosure of confidential information (for exceptions refer to the Whistleblowing Policy);
- any action of sufficient gravity which contravenes the policies of the school, or brings or has the potential to bring, the school into disrepute.

Investigation

It is important to carry out necessary, reasonable and fair investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In most cases, this will require the holding of a formal investigation before proceeding to any disciplinary hearing. In other cases, the investigatory stage will be the collation of evidence by the disciplining manager for use at any disciplinary hearing.

Prior to a formal investigation being commissioned, the Head Teacher/manager will undertake preliminary considerations, including talking to the employee(s) involved where this is relevant, to establish if there is a need for formal investigation.

If a formal investigation is to be carried out, an appropriate independent investigation will be undertaken, as soon as is practicable. The Head Teacher/manager has the right to appoint an external investigator if it is deemed appropriate due to the complexity, seriousness or detail of the issue, or where an external perspective would be of value.

The Investigating Officer will maintain a record of all investigatory meetings and collate witness statements where appropriate, which may be referred to in a disciplinary hearing. Disciplinary action may be taken if an interviewee is found to have deliberately provided false information or discussed the issue outside of the investigatory interview. This requirement does not affect an employee's right to seek advice from their Trades Unions.

Through the investigation process, an employee may be accompanied by a work colleague or trade union representative or official to meetings, providing this does not delay the investigation. There is no statutory right to be accompanied to an investigatory meeting. It is the employee's responsibility to request a representative and to make arrangements for them to be present.

At the conclusion of the investigation, the Investigating Officer will prepare a report, within 20 working days from the date the investigation started, to be passed on to the disciplining manager, who will then determine whether or not a formal disciplinary hearing is required. The investigation report will be completed as soon as. If the investigation takes longer than 20 days, the employee will be informed and a reason given.

Disciplinary Panel

The disciplinary panel will comprise three members from Headteachers, senior managers, SLT (Shared Services Team) or governors, who have had no previous direct involvement in the case. All must be at a higher level in the organisation than the employee and the panel will be supported by the People Team.

Disciplinary Hearing

The employee will receive a full copy of the report and any supporting documentation. They will be given 10 days' written notice of the hearing in order to prepare and arrange representation. Copies of documents to be presented and details of any witnesses to be called by the employee will be sent to the Investigating Officer no later than 5 working days prior to the hearing.

The date of the hearing can be postponed for up to 5 working days if the employee's representative is not available. If an employee fails to attend the re-arranged hearing, and there is no justification for this, their case and/or representation may be considered by management in their absence.

At the hearing, the Investigating Officer and employee will be given an opportunity to state their case, call witnesses and ask questions or challenge the evidence.

Witnesses will only be present whilst giving their information and being questioned on it. A person assisting in presenting a case may be present throughout the presentation of evidence even though they may also be acting as a witness. When the panel has heard all the evidence submitted, all others present will withdraw from the hearing, leaving the panel, with the assistance of the People Team, to consider their decision.

If it is necessary to ask further questions of anyone present during the hearing, all those attending (except witnesses) must be present. This is to ensure that no evidence is given unless the other party has the opportunity to respond and present a view on it.

The decision of the panel may be communicated to the employee at the end of the hearing, following an adjournment, or will be confirmed within five working days following the hearing. The employee will be communicated to if the panel require more time to confirm their decision in writing. The decision, together with the reasons for any warning, the duration of the warning, what will happen if further

offences occur, and the right of appeal, will also be confirmed in writing to the employee as soon as reasonably practical.

Disciplinary Sanctions

Verbal Warning

There may be occasions when it is fair and proportionate to issue a verbal warning. The employee will be advised of the reason for the warning being issued by way of a formal management instruction letter. A copy of the verbal warning will be kept on the employee's personal file and will normally be disregarded for disciplinary purposes after 6 months.

Written Warning

The outcome of the hearing may be to issue a written warning. The employee will be advised of the reason for the warning being issued, and this will be confirmed in writing. A copy of the written warning will be kept on the employee's personal file and will normally be disregarded for disciplinary purposes after 6 months.

In limited circumstances, an expired warning may be taken into consideration in relation to further acts of misconduct, for example, a warning in relation to a safeguarding concern, will remain on file indefinitely and may be referred to if future safeguarding concerns arise.

Final Written Warning

Where there is a failure to change behaviour within the duration of a prior warning, or a further act of misconduct occurs, or where the offence is sufficiently serious, the employee may be given a final written warning. The employee will be advised of the reason for the warning being issued and this will be confirmed in writing. A copy of the written warning will be kept on the employee's personal file and will normally be disregarded for disciplinary purposes after 12 months.

In limited circumstances, an expired warning may be taken into consideration in relation to further acts of misconduct, for example, a warning in relation to a safeguarding concern, will remain on file indefinitely and may be referred to if future safeguarding concerns arise.

Dismissal

If the employee's conduct still fails to improve, or another act of misconduct occurs during the life of a prior warning, the employee may be dismissed, with notice following a hearing.

Any of the above stages may be omitted and / or added to, depending on the seriousness of the misconduct.

Summary Dismissal

In the case of gross misconduct only, the employee may be summarily dismissed without notice.

Alternatives to dismissal

In some cases, alternatives to dismissal may be considered. These will usually be accompanied by a final written warning. Examples include the following:

- Demotion
- Transfer to another team or role
- A period of suspension without pay

- Loss of seniority
- Reduction in pay Loss of future pay increment

Special Situations

Grievances raised during the course of the disciplinary procedure.

An employee may raise a grievance during a disciplinary process. Where this happens, it may be appropriate to suspend the disciplinary procedure for a period until the grievance can be considered in accordance with the Grievance Procedure.

Discipline of Employee Representatives

Any disciplinary action being contemplated in respect of staff representatives of recognised trade unions within this procedure should not be instigated without notification in advance to the full-time official or nominee, of the appropriate Trade Union. Consent will be sought from the staff representative before this happens.

Appeal

An employee has the right of appeal against any formal disciplinary action taken and must be made within 5 working days of receipt of written confirmation of the hearing outcome. The appeal must be addressed to the chair of the disciplinary hearing panel and clearly state the grounds for appeal together with details of any new evidence/witnesses they wish to present.

The appeal will be heard within 10 working days of the appeal being received in writing and the employee will be given at least 5 working days' notice of the appeal hearing.

The appeals panel will be formed from Headteachers, governors, senior managers, SLT (Shared Services Team) or executive directors. All must be at a higher level in the organisation than the employee who has submitted an appeal and no member of the disciplinary hearing panel shall be a member of the appeal panel.

An appeal hearing is not a re-hearing of the disciplinary hearing and it may only proceed on the following grounds:

- The proper procedure was not followed and this materially affected the decision
- The decision reached was incorrect in that the conclusion reached was not supported by the evidence presented
- The sanction awarded was too severe, taking into account the nature of the misconduct and the mitigating circumstances
- Where new evidence which is pertinent and was not reasonably available at the time, has become accessible

An appeal hearing will result in one of the following outcomes:

- The appeal is upheld and any sanction imposed by the original hearing officer is withdrawn
- The appeal is not upheld but a lesser sanction is considered
- The appeal is not upheld and the original sanction remains in place

An appeal hearing cannot increase the sanction imposed on the employee and where an appeal against dismissal is successful, reinstatement will be from the original date with no break in employment continuity.

The decision of the panel may be communicated to the employee at the end of the hearing, following an adjournment, or will be confirmed within five working days following the hearing. The employee will be communicated to if the panel require more time to confirm their decision in writing.

The appeal hearing is the final stage and there is no further right of appeal following a decision.

Policy Review

The Disciplinary Policy will be reviewed **every three years** or sooner, taking into account any legislative changes.

Any changes made to this policy will be communicated to all relevant stakeholders.

Appendix 1: Full Hearing Procedure

1. The chair of the panel will:

- open the hearing and ask all parties to introduce themselves by name and in what capacity they are attending the hearing
- explain the purpose of the hearing and read out the allegations to be considered
- confirm that summary notes of the meeting will be taken (they will not be verbatim)
- request all mobiles/electronic devices are turned off
- outline the format of hearing (please see point 2: order of events, timeframe)
- explain if panel are unable to make a decision today, outcome will be confirmed to employee in letter
- check to see if any party has any questions.

2. Format of the hearing (appeals are in reverse of below stated):

- Investigating Officer present the investigation report (management case)
- Employee / employee's rep asks the Investigating Officer questions
- Panel asks the Investigating Officer questions
- Investigating Officer calls any witnesses (if appropriate) and asks them questions
- Employee/employee's rep ask the witness/es questions
- Panel ask the witness/es questions
- Witness/es leaves the hearing
- Employee / employee rep presents their case
- Investigating officer asks employee / employee rep questions
- Panel asks employee / employee rep questions
- Employee / employee rep calls witnesses (if appropriate) and asks them questions
- Investigating Officer asks the witness/es questions
- Panel asks the witness/es questions,
- Witness/es leave the hearing
- Presenting Officer sums up
- Employee / employee rep sums up
- All parties leave with the exception of HR Adviser and panel
- Panel deliberate to make decision