



Nene
Education
Trust

Disciplinary Policy and Procedure for All Employees

Policy number HR4

Key Manager	HR Director
Ratified by HR committee	September 2018
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Location of Policy:	Trust wide
Access to Policy:	Open
Policy Context:	This Policy applies to all staff of the Trust and to those others offered access to such resources.

Revision History

Revision Date	Description	Sections Affected	Revised By	Approved By
18/07/2018	Annual review	Whole policy and Trust references	H R Director	HR Committee
Autumn 2021				

1.0 Terms of Reference

For all employees employed by the Nene Education Trust.

Definitions

“Employee” refers to any member of the staff, teaching and support, employed to work at the School.

“Senior Manager” refers to any member of the senior leadership team delegated by the Principal to deal with a disciplinary matter under this procedure. The Senior Manager may only make a decision to issue up to and including a final written warning.

“Investigating Officer” refers to a senior manager or an external person appointed by the CEO or Principal.

“Companion” refers to a person chosen by the employee to accompany him/her, who shall be a trade union representative or a workplace colleague.

A “Governors/Trustees Disciplinary Committee” may be convened to deal with a case where the Principal or CEO considers that s/he must act in the role of Senior Manager or Investigating Officer. In this event, substitute ‘Principal’ with ‘Governors/Trustees Disciplinary Committee’ throughout the procedure, in these cases replace ‘Senior Manager’ in section 4.1 with ‘Clerk to Governors’.

A “Governors/Trustees Appeal Committee” may be convened to hear an appeal against a written warning or dismissal. Where possible the number of governors on the committee will be equal to, or greater than, the decision maker(s) of the case being appealed.

2.0 General Principals

- 2.1 This Disciplinary Policy and 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 organisation. Any steps under the procedure will be taken promptly unless there is good reason for the delay.
- 2.2 Examples of the type of conduct that is considered misconduct or gross misconduct, which could lead to action under this Disciplinary Policy and Procedure, are set out in Appendix 1, Disciplinary Rules, which apply to all employees, and should be read in conjunction with this policy.
- 2.3 This policy and procedure does not form part of any employee's contract of employment and it may be amended at any time. The policy and procedure applies to all employees except for non-teaching employees within their probationary period who are regulated by the probationary policy of the Trust.

- 2.4 All employees are responsible for familiarising themselves with the expected standards of work and conduct including the Trust's Staff Code of Conduct, their terms and conditions of employment and associated policies including those related to timekeeping; absence reporting, confidentiality; using e-mail, internet and telephones; data protection.
- 2.5 Employees should ensure that their own conduct accords with established standards of work and conduct, including those mentioned above, in a way that promotes a positive working environment.
- 2.6 This policy and 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.
- 2.7 Advice on the application of the procedure is available from the Director of HR at all stages of the process and line managers should seek advice from HR at the earliest opportunity whenever an employee's conduct is giving cause for concern and might result in disciplinary action.
- 2.8 Actions taken by employees outside working hours may also fall within the scope of this policy. For example, where there is an impact on the employee's ability and/or suitability to do their job or the Trust/academy considers the employee's actions bring the Trust or academy or employee into disrepute. This includes a breach of professional standards and the code of conduct.
- 2.9 Where an employee is subject to more than one allegation relating to their conduct, these issues may be dealt with together, if appropriate.
- 2.10 In cases against the Principal, the CEO, has the power to discipline or suspend. Where the CEO has been involved as the senior manager or in the role of Investigating Officer of if dismissal is a possible outcome, the case will normally be heard by a panel of three Governors/Trustees in accordance with the procedure set out below.
- 2.11 In cases against the CEO, the Chair of the Trustees or a Committee of Trustees has power (where the Chair has acted as senior manager or Investigating Officer) to discipline or dismiss the CEO in accordance with the policy and procedure set out below. It may be necessary to co-opt governors from another MAT where it is not possible to form a panel from the Trust's own Trustees.

2.12 In cases involving central staff, substitute CEO for Principal.

3.0 Equality and Diversity

- 3.1 The Trust will operate the Disciplinary Policy and Procedure in accordance with its equal opportunities policies and with the ACAS Code of Practice. It will also make suitable arrangements to keep the policy under review and to monitor its operation against equalities criteria in accordance with the Equality Act 2010.
- 3.2 If a member of staff has difficulty at any stage of the procedure because of disability, they should discuss the situation with their Line Manager or the Hr team as soon as possible.

Part A – Informal Procedure

4.0 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. A brief record of any such informal discussion will be placed on the employee's personnel file. The written record, which may be a note, letter or email, will set out the misconduct, the improvement that is required and, if appropriate, how this will be reviewed and during what timeframe. The record will remain on file for no longer than 6 months. Should a similar incident occur within this time, it may not be appropriate to use the informal stage again. The Employee may make a written comment on the note if s/he has any objection to the informal action taken. There is no right of appeal at the informal stage.
- 4.3. Further advice should be sought from the Trust's HR Director as to when it is appropriate to refer to this in future investigations that may be required. .

Part B – Formal Procedure

5.0 Suspension

- 5.1. The Principal has the power to suspend any person employed to work at an Academy, CEO for central staff and the Board of Trustees for the CEO. Suspension for alleged misconduct should only be instigated after full consideration:-
where the suspected offence may amount to gross misconduct; or
in a situation when it is decided that a member of staff should be away from the Academy in the best interests of the investigation or the employee while a serious matter is being investigated.
- 5.2. Suspension of this kind is not a disciplinary sanction and does not imply "guilt" or that any decision has already been made. Suspension may involve a total suspension from work;
suspension of part of the employee's normal duties;

transfer to alternative work or transfer to a different workplace.

The alternative options should be considered before implementing a total suspension from work. The HR Director must be consulted before this action is taken, if not available then the CEO must be consulted.

- 5.3. The Principal, when exercising this power, shall immediately inform the Chair of the Local Governing Body and the CEO.
- 5.4. Suspension under this paragraph may be ended by the Principal following discussion with the HR Director and in agreement with the Chair of the Local Governing Body or CEO.
- 5.5. During suspension, the employee will be paid their normal rate of pay (including any other contractual payments) as received immediately prior to the suspension.
- 5.6. Any period of suspension should be as brief as possible.
- 5.7. The suspension letter will provide the employee with a named person as a suitable contact point at the Academy.
- 5.8. During a period of suspension, wherever possible there should be a nominated member of staff with whom the suspended employee can communicate in order to be kept informed about school matters and the progress of the investigation. If the suspended employee should wish to communicate with other staff (e.g. to use them as defence witnesses), this should be done via the nominated contact and/or through their representative/work colleague. Under the terms of the contract of employment, staff are required to co-operate with their employer and should not, therefore, refuse to appear as a witness without good cause.

6.0 Investigations

- 6.1 The purpose of an investigation is for the investigating manager to establish a fair and balanced view of the facts relating to any allegations of misconduct against the employee before a decision is made on whether to proceed with a disciplinary hearing. This may involve reviewing any relevant documents and interviewing the employee and any witnesses. In more serious or complex cases and particularly where serious or gross misconduct is alleged, the investigation should be carried out by a senior manager other than the one designated to conduct the disciplinary hearing. Unless there are exceptional circumstances involving accusations against the Principal or CEO; governors or Trustees should not be involved in these meetings.
- 6.2 The investigating manager should refer to the 'Investigating Manager's guide' and may be advised and guided on procedural issues by the HR Director. The employee may be accompanied by a trade union official or a work colleague.
- 6.3 An investigatory meeting should not be used to issue a disciplinary sanction. In cases of less serious misconduct, there may be no need for a formal investigatory meeting other than the disciplinary hearing. In these cases, the employee must be made fully aware of the status of the meeting and that disciplinary action could be a possible outcome.
- 6.4 Any employee required to be interviewed as part of the disciplinary investigation should be advised of the date, time and location of the interview in writing in advance of the interview, allowing them reasonable time to prepare. They should also be advised that the interview is being conducted under this policy, and either be signposted to, or sent directly, a copy of this policy. An employee may wish to be accompanied to a disciplinary investigatory interview by a colleague or representative of their trade union/professional association; this request should not normally be refused.
- 6.5 The employee must cooperate fully and promptly in any investigation, including informing the investigating manager of the names of any relevant witnesses, disclosing any relevant documents and attending any investigatory interview.
- 6.6 After completing an investigation, the investigating manager will prepare a report for the senior manager and in the summary make recommendations that may include:
 - To deal with the matter informally; or
 - Arrange a disciplinary hearing if the matter is more serious; or
 - Dismiss allegations raised which are trivial, false or without substance;
- 6.7 Evidence from Pupils: Where pupils are involved they should normally be questioned before the hearing individually and not collectively. Redacted statements taken from pupils may be produced as evidence during the disciplinary interview. Pupils will be provided with support during these meetings.
- 6.8 If the allegation is concerning safeguarding and the safety of or potential abuse of children is suspected you must refer to the Trust's Safeguarding policy and Management of Allegations against staff Policy.

7.0 Disciplinary Hearing

- 7.1 If, following appropriate investigation by the Investigating Officer, the Senior Manager considers on the facts that formal disciplinary action for misconduct is necessary, s/he will write to the employee to inform him/her as soon as practicably possible, at least 5 working 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 his/her 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.
 - His/her right to call witnesses on his/her behalf.
 - The name and position of any HR adviser who will accompany the Senior Manager at the hearing.
 - The name and position of any note taker.
- 7.2 (At the employee's request, an extra copy of this notice, together with any enclosures, should be provided for his/her companion).
- 7.3 If the employee's chosen companion is not available at the time fixed for the meeting, it should be rescheduled to accommodate the availability of the companion, as long as a reasonable alternative date is agreed which is within 5 working days of the originally proposed date.
- 7.4 Employee representatives can address formal meetings and assist employees in presenting their case. Normally, the employee concerned rather than the employee's representative should answer questions directed at employees.
- 7.5 Accommodation shall be made available for the employee and their representative to discuss the case prior to and during the hearing.
- 7.6 The employee must advise the Senior Manager of the following at least 3 working days in advance of the hearing:
- The name and designation of his/her companion.
 - Provide any written documentation to be considered.
 - The names of any witnesses at that he/she wishes to call.
 - Any special requirements (e.g. disability, language requirements).
- 7.7 At the disciplinary hearing led by the Senior Manager and his/her HR adviser (usually the Trust's HR Director), the Employee (and his/her companion) will be given a reasonable opportunity to state his/her 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.
- 7.8 A written record of the hearing must be taken. The note taker may be the clerk to the governors or a member of staff at the academy or the Trust. The note taker will make a record of the hearing, but not of the confidential deliberations of the panel.
- 7.9 The Trust does not support the audio recording of disciplinary hearings unless there are exceptional circumstances for doing so. Covert recording is considered gross misconduct.
- 7.10 Following the hearing, the Senior Manager will consider the matter and confirm the decision in writing to the employee and his/her companion as soon as possible and usually within 5 working days of the hearing, to include:
The sanction (if any) and the period this will remain current.
- His/her reasons for the decision.
 - The change in behaviour required (if relevant) and the likely consequences of further misconduct.
 - Right of appeal.

- 7.11 On occasions, it may be possible and acceptable for an agreement to be arrived at prior to the start of a hearing between both parties in circumstances where the facts are not in dispute and **both parties agree on the sanction**. A formal meeting should be held to discuss the key findings of the investigation and issue the pre-agreed sanction. This approach **will not apply to allegations of gross misconduct or where dismissal is a possible outcome or where the allegation concerns the safeguarding and protection of children**. There will be a right of appeal within 5 working days of the receipt of the decision letter.

8.0 Formal Disciplinary Action

- 8.1 First Written Warning
- 8.2 The Senior Manager may give the employee a first written warning which will include a statement that any further complaint of misconduct occurring within the next twelve months that is found justified after a disciplinary hearing, will lead to a final warning, unless there are mitigating circumstances.
- 8.3 Final Written Warning
- 8.4 The Senior Manager may give the employee a final written warning, which will include a statement that any further complaint of misconduct occurring within the next twelve months that is found justified after a disciplinary hearing, will lead to dismissal, unless there are mitigating circumstances.
- 8.5 If following the issue of a first written warning, a further complaint is made about the employee's conduct before the first written warning has expired, the same procedure (as in 5 above) will be followed. A final written warning may be issued as detailed above.
- 8.6 Dismissal
- 8.7 If a further complaint is received before the final written warning has expired, the complaint will be referred to a hearing before the Principal following the same procedure as in paragraph 5 above. The Principal must be accompanied by the HR Director.
- 8.8 If the Principal decides the complaint is justified, s/he may decide to dismiss the employee. The Principal will state the decision, the reasons and inform the employee of his/her right to appeal to a Governors Appeal Committee. S/he will confirm the decision and right of appeal in writing to the employee (and his/her companion) as soon as possible and normally within 5 working days of the hearing. The Principal will record the outcome of his/her considerations and the names of persons present at the hearing.
- 8.9 Where there is further misconduct during the life of a final written warning, the employee may be dismissed with notice or payment in lieu of notice.

9.0 Gross Misconduct

- 9.1 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), the employee may be informed by the Principal or the Chair of Governors that s/he is suspended on full pay pending further investigation of the complaint.
- 9.2 If, following an investigation, the Investigating Officer considers that the facts of the case amount to a prima facie case of gross misconduct, the matter will be referred to the Principal.

- 9.3 Following the same procedure as in paragraph 7 above, if on conclusion of the disciplinary hearing the Principal considers the complaint constitutes gross misconduct, s/he may decide to dismiss the employee without notice or pay in lieu of notice.
- 9.4 Where a suspension has taken place that suspension may only be lifted by the Chair of the Local Governing Body, acting on behalf of the Governing Body or the Chair of the Trustees in the case of a member of the central office staff.

10.0 Variations 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 Principal 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.

11.0 Right of Appeal

- 11.1 The employee has a right of appeal against a decision to issue a warning or to dismiss.
- 11.2 Appeals against formal written warnings or dismissal should be made in writing to the Clerk to the Governors, stating the grounds for appeal in full, within 5 working days of the date of the written decision.
- 11.3 An appeal against a written warning (see paragraph 7) will be heard by the Governors/Trustees Appeal Committee. The panel may have the HR Director present or an external adviser, if the HR Director has been directly involved in the case. The Committee may confirm the written warning, reduce a final written warning to a first written warning, or cancel the written warning.
- 11.4 An appeal against dismissal (see paragraph 7) will be to the Trustees Appeal Committee, none of whom shall have any previous involvement in the case. The panel may have the HR Director present or an external adviser, if the HR Director has been directly involved in the case.
- 11.5 All appeal hearings will be held as soon as possible and, in normal circumstances, within 10 working days after receipt of the appeal. The Clerk to the Trust Board will usually undertake administrative arrangements for any required hearing or meeting.
- 11.6 To be quorate, the appeal panel must consist of at least the same number of governors/Trustees as at the previous hearing.
- 11.7 New evidence will only be considered if relevant and there is a good reason why this had not been included as part of the original hearing.
- 11.8 The outcome will be confirmed in writing as soon as possible and usually within 5 working days of the hearing. There will be no further right of appeal.
- 11.9 Where the Governors Appeal Committee 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 of the Governors Appeal Committee.

- 11.10 Where an appeal against dismissal is not upheld, the date of termination will be the date on which the employee was originally dismissed. During the appeal stage the employee will remain dismissed from the school. If an employee is reinstated following dismissal, he/she will be treated as being continuously employed for the whole period, including the period between dismissal and reinstatement.
- 11.11 In the event that the Trustees Appeal Committee decides not to uphold the decision to dismiss, the Employee will be reinstated without loss of pay.

12.1 Criminal Offences Outside of Employment

- 12.2 The ACAS guide, Discipline and grievances at work provides good advice to employers when confronted with special situations such as this. The first question to be asked is whether the alleged offence (or conviction) merits action because of its employment implications? Does the offence make the employee unsuitable for their type of work, or unsuitable to remain in their present employment? The Trust should investigate the facts as far as possible, come to a view about them and consider whether the conduct warrants disciplinary action. Where it determines that such action is required, the Trust does not need to wait for the outcome of the prosecution before taking fair and reasonable action. In these circumstances the procedure set out in cases of misconduct or serious/gross misconduct shall be applied as appropriate.
- 12.3 In some cases the nature of the alleged offence may not justify disciplinary action – for example, off-duty conduct which has no bearing on employment – but the employee may not be available for work because they are in custody or on remand. In these cases the Trust should decide whether, in the light of the needs of the organisation, the employee's job can be held open. Where a criminal conviction leads, for example, to the loss of a licence so that continued employment in a particular job would be illegal, the Trust may advise of any suitable vacancies within the Trust.
- 12.4 Where an employee, charged with or convicted of a criminal offence, refuses or is unable to cooperate with the Trust's disciplinary investigations and proceedings, this should not deter the Trust from taking action. The employee should be advised in writing that unless further information is provided; a disciplinary decision will be taken based on the information available and could result in dismissal.
- 12.5 Where police or other investigations are being carried out in relation to this paragraph, a suspension may be continued until the investigations are complete or, where appropriate, court action taken. Suspension in these circumstances could be in the best interests of the Trust or the employee. The HR Director should be consulted before action is taken in these cases

13.0 Trade Union Representatives

13.1 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.

14.0 Confidentiality

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

Appendix 1

Purpose

The Disciplinary Rules are intended to give examples of the type of conduct that is considered misconduct or gross misconduct, and which could lead to action under our Disciplinary Procedure.

Gross Misconduct

Gross Misconduct is a serious breach of contract and includes misconduct, which, in our opinion, is likely to prejudice our organisation or reputation or irreparably damage the working relationship and trust between us. If you are suspected of committing an act of gross misconduct, you may be suspended with full pay pending investigation. Gross misconduct will be dealt with under our Disciplinary Policy and Procedure and will normally lead to dismissal without notice or pay in lieu of 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 you 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.
- Criminal activities or offences, whether committed at work or not, that may affect our reputation or otherwise affects your 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 our equipment or during working time.
- Communicating offensive, obscene or unauthorised sexually explicit material whether verbally, written, in electronic communication, or by social media.

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

- Serious negligence, serious neglect of duties or, a serious or deliberate breach of your conditions of employment, operating procedures, public examination rules, DfE statutory requirements, statutory rules affecting your work or, Health and Safety rules, for example:
 - a) Failure to comply with the Prevent Duty.
 - b) Failure to report safeguarding concerns.
 - c) Failure to exercise proper control or supervision of pupils.
 - d) Disclosure of restricted public examination material or content.
 - e) Falsifying sickness absence.
 - f) Taking leave when permission denied.
 - g) Ignoring handling instructions/responsibilities/safety regulations to include those in relation to chemicals, machinery, equipment or food.
- A serious breach of our Code of Conduct.
- A serious act of insubordination.
- Dishonesty associated with place of work or job being undertaken, for example:
 - a) Theft or unauthorised removal or misuse of property.
 - b) 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 your 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.
 - c) Demanding or accepting monies or other considerations as a bribe for the use of our property or provision of our service.
 - d) 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 your employment an arrest or summons for an offence, a conviction, a bindover order, a reprimand or a warning given by a police force.
 - e) 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 your possession is kept secure.
- Making statements that are or could be damaging, slanderous or libellous whether verbally, written, in electronic communication or by social media, which could be harmful to a pupil, an employee or other worker, a governor, a member of the public, or our reputation.
- Unlawful harassment or victimisation of, or unlawful discrimination against, a pupil, an employee or other worker, a governor, or a member of the public.

- Victimising a person who has raised concerns, made a complaint, given evidence or information under our policies, e.g. Grievance Procedure, Disciplinary Procedure or otherwise.
- Making a disclosure of false or misleading information under our 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 organisation into serious disrepute.

5. Misconduct

The following are examples of matters that will normally be regarded as misconduct and will be dealt with under this Disciplinary Policy and Procedure. This list is intended as a guide and is not exhaustive.

- Absenteeism and lateness, for example:
 - a) Unauthorised absence or leaving your job during working hours without permission or sufficient cause for absence.
 - b) Frequent failure to attend work punctually.
 - c) Failure to comply with our sickness absence reporting procedure.
- Neglect of duty, for example:
 - a) Failure to adopt safe working practices/use protective equipment where required by law or management.
 - b) Damage to, or unauthorised use of our property or contractors' property.
 - c) Insubordination.
- Obscene language or other offensive behaviour.
- Engaging in other businesses or additional work that could be a potential conflict or adversely affect an employee's ability to perform their substantive post without the required declaration or consent of the Principal or Line Manager.
- Breaches of our policies.
- Breaches of your contract.