

# North Halifax Grammar School

## Disciplinary Policy



<b>Approved by:</b>	Full Governance Board
<b>Date approved:</b>	6 <sup>th</sup> February 2019
<b>Next review:</b>	Spring Term 2022
<b>Policy owner:</b>	Personnel Officer

## STATEMENT

The Governance Board delegates the power to make the Initial Disciplinary Decision (IDD) to the Principal (including up to dismissal). The Principal may further delegate the responsibility for deciding sanctions up to but not including an Initial Dismissal Decision (IDD).

This is a non-contractual policy and the Governance Board reserve the right to amend it at any time.

### 1. Aims

The Trust expects all its staff to recognise their obligations in accordance with the Code of Conduct, as well as the other policies and procedures and to ensure they, at all times, conduct themselves in a professional manner in all interactions with parents, students, governors and other employees and in the course of their work.

This Policy (together with the Code of Conduct and, for teachers, Teaching Standards) sets out the standards of conduct expected of all staff and provides a framework within which the school leadership can work with all employees to maintain satisfactory standards of conduct, to encourage improvement where necessary and to manage breaches of discipline.

### 2. Application

This policy applies to all employees of the North Halifax Grammar School Academy Trust.

This policy will not apply to:

- issues related to alleged capability, except where it is considered to be a wilful refusal by the employee to carry out their duties; and
- staff within their probation period.

There may be some occasions where an employee's lack of capability could also be described as lack of competence. This Disciplinary Policy and the Capability Policy may be used concurrently whilst the Academy endeavours to ascertain if the lack of capability is misconduct or lack of competence.

There may be occasions where an employee's conduct could relate to their health. In this event, this Disciplinary Policy may be used concurrently with the Academy's Sickness Absence Policy.

There may be occasions, for example, in relation to child protection allegations, where this procedure needs to be modified to comply with the requirements of the Academy's Child Protection and Safeguarding Policies, for example, by allowing the Local Authority Designated Officer ("LADO") to offer advice to Governance Board at appropriate stages.

### 3. Principles

It is not possible to define all acts of misconduct or unacceptable behavior that could lead to disciplinary action. However, some examples of misconduct and gross misconduct are given in this disciplinary procedure.

The Academy does not encourage the making of anonymous allegations as it can significantly and adversely impact on its means to investigate it as fully as normal. It will only consider these in exceptional circumstances. Any decision to consider anonymous allegations will be at the absolute discretion of the Trust. In exercising this discretion, the following factors will be considered:

- the seriousness of the issues raised;
- the credibility of the concern; and
- the likelihood of being able to confirm the allegation.

Employees should make all reasonable efforts to attend a meeting which is arranged under this procedure. Where employees are persistently unable or unwilling to attend a disciplinary hearing without good cause, the Academy may make a decision on the basis of the available evidence and in the employee's absence. Such evidence may include written representations of the employee, if provided by the employee.

#### 4. Gross Misconduct

Gross misconduct is the committing of an act which renders it inadvisable for the employee to be allowed to remain at work. Any employee suspected of committing an act of gross misconduct, as indicated in the list below, will be suspended with full pay pending investigation.

If, after proper investigation, it is decided that the employee has committed an act of gross misconduct or if the act is admitted by the employee, they will be dismissed without further warning, unless there are mitigating circumstances. The disciplinary procedure must be followed in all cases.

The lists of examples below are not intended to be exclusive or exhaustive and offences of a similar gravity will receive the same treatment.

##### 4.1 Dishonesty associated with the Academy or the role being undertaken:

- a) Theft of property belonging to the Academy, contractor, an employee or student, or member of the public.
- b) Deliberate falsification of timesheets or expenses claims for pecuniary advantage.
- c) Demanding or accepting monies or other considerations as a bribe for the use of Academy property, provision of Academy service or the showing of favour on behalf of the Academy.
- d) Falsification of any information given on an application form for a post to gain advantage whether pecuniary or otherwise.
- e) Failure to disclose criminal convictions not exempt under the terms of the Rehabilitation of Offenders Act, 1975.
- f) Falsification of registration of pupils or students for pecuniary gain.
- g) Ordering any goods or services on behalf of the Trust from a supplier in which you or a relative have a personal interest (whether financial or not) without declaring that interest or obtaining permission.

4.2 Deliberate refusal to carry out a reasonable, lawful and safe instruction or the normal agreed defined duties of the post.

4.3 Gross negligence in failing to attend or to carry out the agreed duties of the post.

4.4 Wilfully ignoring responsibilities/instructions thus placing other employees/students in danger e.g. ignoring handling instructions/safety regulation in respect of radioactive materials or other hazardous substances.

4.5 Being unfit to perform duties associated with the post as a result of taking drugs (other than in accordance with medical advice) or taking alcohol.

4.6 Wilful unauthorised disclosure of information (classed as confidential), by employees who, in the course of their duties, have access to such information which, by its release, could be harmful to the Academy, other employees or students.

##### 4.7 Acts of violence or vandalism in the course of employment:

- a) Malicious damage to property belonging the Academy, contractors, other employees or student's property.
- b) Actual physical violence towards members of the Academy staff, governors, parents, students, other members of the public inside or outside of work.

##### 4.8 Sexual misconduct at work:

- a) Sexual misconduct, whether criminal or not;
- b) Sexual relations with students.

##### 4.9 Off duty misconduct:

- a) An act of criminal sexual misconduct by an employee who, in the course of duty, has contact with young people;
- b) Drug offences committed by employees whose job brings them into contact with young people;
- c) Sexual relations with students, or young people.
- d) Supplying your personal contact details to a student without express permission from the Principal.
- e) interacting with a student out of school hours other than in the course of their learning.

#### 4.10 Misuse of the internet, email or other digital facilities of the Academy:

- a) Using the internet to access unseemly or sexually explicit material.
- b) Using email for communicating unseemly or sexually explicit material.

#### 4.11 Prolonged or persistent unauthorised absence from work.

### 5. Misconduct

Misconduct is behaviour of a degree less serious than that which would warrant immediate suspension from duty for a first offence but which could nevertheless lead to dismissal if persistent. The disciplinary procedure must be followed when dealing with misconduct.

Some more serious acts of misconduct might justify omitting the first stage of disciplinary procedures by issuing a final warning in the first instance, if there is no satisfactory explanation. Only when it can be shown that the warnings have not been heeded will misconduct lead to action being taken which will lead to an employee's dismissal.

The lists of examples below are not intended to be exclusive or exhaustive and offences of a similar gravity will receive the same treatment.

#### 5.1 Absenteeism and lateness, for example:

- a) Failure to remain at the place of work during normal working hours without permission or sufficient cause for absence.
- b) Frequent failure to attend work punctually.
- c) Failure to notify the Academy immediately or as soon as reasonably practicable when absence is due to sickness.
- d) Failure to provide medical certificates in accordance with the Conditions of Service.

#### 5.2 Dishonesty – petty wrongs, for example:

- a) Making unauthorised private telephone calls and/or sending personal mail at the establishment's expense.
- b) Failure to report any loss and/or damage to any property issued to or by the employee in connection with their employment.
- c) Using the Academy's telephone, email or internet for unauthorised personal purposes.

#### 5.3 Neglect of duty, for example:

- a) Failure to adopt safe working practices/use protective equipment where required by law or management.
- b) Negligent use of property in such a way as is likely to cause serious damage or loss.
- c) Failure to discharge without sufficient cause the obligations which statute or the contract of employment places on the employee, e.g. failure to act in accordance with the requirements placed on the Academy by the Special Education Needs Discrimination Act.
- d) Insubordination.
- e) Failure to exercise proper control or supervision of students.

#### 5.4 Abusive behaviour/offensive language which arises directly out of or in connection with work and which is directed at colleagues, governors, students or members of the public. Depending on the seriousness, this could also amount to gross misconduct.

#### 5.5 Victimisation of other employees in the course of duty.

- 5.6 Unlawful discrimination against other employees, students or members of the public in the course of duty. Depending on the seriousness this could also amount to gross misconduct.
- 5.7 Discrimination, whether unlawful or not, in the course of duty against other employees, students or members of the public on the grounds of a protected characteristic. Depending on the seriousness this could also amount to gross misconduct.
- 5.8 Undertaking additional employment outside of normal working hours which would be detrimental to the work to be performed as a full time employee of the Academy.

## **6. Disciplinary Procedures Relating to Misconduct**

### **Investigation**

Depending on the circumstances of the case, the employee may be invited to attend an investigatory interview and will be informed at the outset that the interview is an investigatory interview.

The purpose of an investigation is for the Trust to establish a fair and balanced view of the facts relating to any disciplinary allegations against the employee, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from you and any witnesses, and/or reviewing relevant documents.

Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.

Investigations will be carried out by the appropriate line manager or a suitably appointed person who is not involved in the allegations. Sometimes this may be an external investigator. When the investigation is complete, the investigating manager shall report to the Principal who shall review the outcome of the investigation to decide whether there is a case to answer and whether a hearing in accordance with these procedures should be convened.

The employee will be informed as soon as possible that an investigation is being undertaken and when it is envisaged that investigation will conclude.

There is no right for the employee to be accompanied at a formal investigatory interview.

The Academy reserves the right to dispense with an investigatory interview and to proceed directly to a formal disciplinary hearing.

### **Suspension**

There may be instances where suspension with pay is necessary while investigations are carried out and/or pending a disciplinary hearing. This may be, for example, where there are reasonable grounds for concern that evidence may be tampered with or destroyed, or witnesses coerced before the disciplinary hearing, or if it is believed there is a potential risk to the Academy, other employees, students or third parties in allowing the employee to remain at work. Suspension may also be considered if it is felt your presence at work may hinder the investigation.

This suspension is not a punishment or a form of disciplinary action and does not indicate that the Academy has pre-judged the matter under investigation.

The suspension will be for no longer than is necessary to investigate the allegations and we will confirm the arrangements to you in writing. While suspended you should not visit the Academy's premises or contact any pupils or staff, unless you have been authorised to do so by a named contact.

If an employee is suspended for any reason, they will be given a named contact to provide effective support throughout the suspension.

During suspension, employees will continue to receive their full basic salary and benefits.

During any period of suspension, the employee's contractual duties to the Academy (whether express or implied) remain in force and enforceable, except that they are not required to attend work.

It is likely that the staff member will be suspended, for a full investigation to take place if an allegation is made that a staff member has:

- behaved in a way that has harmed or may have harmed a child; or
- possibly committed a criminal offence against or related to a child; or
- behaved towards a child or children in a way that indicates that she or he is unsuitable to work with children.

### Formal procedure

Where the Principal considers on the preliminary facts that there is a disciplinary case to answer for misconduct at any level they will refer it to be considered at a disciplinary hearing. The hearing will be held either by the Principal or, where the allegations are serious and/or could lead to dismissal, a Staff Disciplinary Committee made up of 2 Governors and the Principal.

In convening a disciplinary hearing, the employee will be informed in writing of the nature of the complaint or allegations against them and the basis for the complaint.

They will also receive notice to attend a disciplinary hearing and this would normally be 5 working days (seven consecutive days if out of term time) in advance, setting out:

- a) The date, time and place of the disciplinary hearing.
- b) The nature of the complaint.
- c) The employee's right to be accompanied by their representative of an independent trade union or a work colleague.
- d) The titles of enclosed copies of any documents to be used as evidence.
- e) The names of any witnesses to be called by the Principal or the Staff Disciplinary Committee (as applicable).
- f) The employee's right to call witnesses on their behalf.

The employee must take all reasonable steps to attend. At the disciplinary hearing, the employee (and their representative) will be given a reasonable opportunity to state their case.

An employee will have a right to be accompanied to all disciplinary hearings by either a Trade Union Representative or a work colleague, who may address the hearing to put their case forward, sum up their case and respond to any view expressed at the hearing, but cannot answer questions on their behalf. The Academy will permit employees reasonable time to confer privately with their representative. If their chosen representative is not available to attend on a proposed date they may offer a reasonable alternative date which must be within 5 working days of the date first proposed.

At the conclusion, the Principal or the Staff Disciplinary Committee (as applicable) will state the decision (if reached) and the reasons for it and will soon afterwards confirm this in writing to the employee and their representative. Alternatively, the Principal or the Staff Disciplinary Committee (as applicable) may need to deliberate to consider any information obtained at the hearing. If so, any decision will be confirmed in writing to the employee as soon as it is reached.

### Sanctions

A sanction may include giving an informal verbal warning instead of a formal written warning.

For minor offences, the sanction would normally be a **first written warning** which will include a statement that any further complaint of misconduct occurring within the next twelve months will lead to a final warning, unless there are mitigating circumstances.

Where there is a further misconduct (whether or not of the same nature) during the currency of any prior warning or where the misconduct (even without an earlier warning) is sufficiently serious, the normal sanction will be a **final written warning** and the employee will be warned that dismissal will result if there is further misconduct within the twelve months following the date of the warning.

If the employee is given no further written warning of misconduct within twelve months of the date of a written warning, then the previous warning will normally be disregarded and the warning letter will make this clear.

Mitigating circumstances will be considered in determining the appropriate sanction.

Although normal disciplinary standards must apply to the conduct of a trade union official as an employee, no disciplinary action beyond a verbal warning should be taken until the circumstances of the case have been discussed with the relevant full time trade union officer.

The proceedings of this disciplinary procedure shall remain confidential to the parties concerned. Only the decision of a disciplinary hearing may be reported.

Other than in cases of gross misconduct, employees will not normally be dismissed for a first offence

## **Dismissal**

If, further to initial investigation, there is further misconduct whilst a final warning is live or very serious misconduct amounting to potential gross misconduct or a serious breach of trust and confidence, the Principal will normally refer the matter to a disciplinary hearing before the Staff Disciplinary Committee which must consist of at least 3 Governors. The Principal may decide to issue a further final warning rather than refer the complaint to the Staff Disciplinary Committee of the Governors. In either case, this meeting will follow the procedure for a disciplinary meeting above.

If the misconduct is considered so serious that it may amount to gross misconduct, justifying dismissal without previous warning and without notice (see the Disciplinary Rules above), the employee will normally be informed by the Principal that they are suspended on full pay pending further investigation of the complaint.

If the Staff Disciplinary Committee decides the complaint is substantiated on the balance of probabilities, having considered the evidence, it will consider whether dismissal is the appropriate sanction. For cases of gross misconduct or where there is already a live final written warning dismissal would be the normal sanction. In cases of gross misconduct, dismissal would be without notice or without pay in lieu of notice.

The Staff Disciplinary Committee may alternatively decide to issue a further final warning rather than dismiss. The Staff Disciplinary Committee will state its decision and its reasons and will soon afterwards confirm them in writing to the employee (and their representative).

The action which is taken will depend upon the seriousness of the breach of discipline, the employee's seniority, whether trust and confidence with the employee remains intact or could be retrieved and any other relevant circumstances, such as whether it is a first or second offence and the damage (including potential damage) caused to the Academy.

## **Appeals**

An employee has a right of appeal against both first and final written warnings issued by the Principal.

The employee's notice of appeal, stating the grounds against a decision to dismiss, should be sent to the Clerk to the Governance Board within 5 working days (seven consecutive days out of term time) of the receipt of the written decision. The appeal must clearly set out the reasons for appeal which should relate to any of the following:

- **procedure** – how procedural irregularities are alleged to have occurred;
- **facts** – how the facts on which the decision was based are misinterpreted or disregarded or incomplete. Any additional new evidence should be provided;
- **decision** – why the act(s) of misconduct do not justify the level of disciplinary action taken or the act was one of misconduct rather than gross misconduct.

Appeal hearings will be held as soon as possible after the receipt of the appeal. The Academy will give written notice of the date, time and place of the appeal hearing.

If the appeal relates to a dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful the employment will be reinstated with no loss of continuity or pay.

The appeal will be heard by the Disciplinary Appeals Committee, made up of 3 Governors who have not previously been involved. They can either uphold the warning or cancel it. There is no right of appeal against a verbal warning, if one has been given.

If the decision was to dismiss, the employee must be given an opportunity to appeal to the Dismissal Appeals Committee of the Governors, made up of 3 Governors who have not previously been involved.

The appeal hearing will usually be a review of the fairness of the original decision taking account of the particular grounds of appeal and any new information that is identified, not a re-hearing. Exceptionally it may be conducted as a complete re-hearing of the matter. This will be at the Trust's discretion depending on the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.

If new matters of evidence are raised in an appeal, the Academy may need to carry out further investigation. If any new information comes to light, it will provide the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before or during the hearing.

Following the appeal hearing, the Disciplinary Appeals Committee or the Dismissal Appeals Committee may:

- a) confirm the original decision;
- b) revoke the original decision; or
- c) substitute a different penalty.

There is no further right of appeal against a decision of the Disciplinary Appeals Committee or the Dismissal Appeals Committee.

**The Academy reserve the right to vary the timings contained in this procedure in appropriate circumstances.**

### **Referral**

Dependent on the nature of the misconduct, the Academy may be bound to report the misconduct of staff to any relevant external agency e.g. National College for Teaching and Leadership (“**NCTL**”), Police, Health and Safety Executive, Disclosure and Barring Service (“**DBS**”), Designated Officer etc or any other body from time to time in charge of the regulation of conduct of staff. There is no requirement, nor is it normal practice, for this to be done with the employee's consent and/or knowledge. It would normally apply where a person working within the Academy (whether a teacher or not) is dismissed or would likely have been dismissed if they had not resigned and where there is a substantive case to answer that the person committed conduct:

- a) which endangered a child or was likely to endanger a child
- b) which, if repeated against or in relation to a child, would endanger that child or would be likely to endanger the child
- c) involving sexual material relating to children (including possession of such material)
- d) involving sexually explicit images depicting violence against human beings (including possession of such images)
- e) of a sexual nature involving a child

### **Misconduct in relation to the Principal**

The above procedure shall apply in relation to alleged misconduct of the Principal save that the references to “the Principal” shall be “Chair of the Governance Board”.

## **7. Grievance arising during the procedure**

1. If a grievance is raised during the disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. However, the Academy may decide that it is appropriate to deal with any grievance and disciplinary matter concurrently. This will depend on the nature of the grievance. A grievance shall not lead to any automatic delay or pause in the conduct of any matters under this Disciplinary Policy.
2. Where an employee has a grievance against the way any member of staff, the Principal or panel member has conducted the procedure, this will normally be dealt with as part of the process, both at disciplinary and appeals stage. However, in very exceptional circumstances, where the behaviour of any person involved in the procedure is the cause of the grievance, it may be appropriate to suspend the procedure for a short period until the grievance has been considered.
3. Where the Principal has a grievance against the way the Chair of the Governance Board has

conducted the procedure this will normally be dealt with under the appeals process set out above. However, in very exceptional circumstances, where the behaviour of the Chair of the Governance Board is the cause of the grievance, it may be appropriate to suspend this procedure for a short period until the grievance has been considered.