

North Halifax Grammar School

Disciplinary Policy



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| Approved by: | Full Governance Board |
| Date approved: | October 2022 |
| Next review: | Autumn Term 2025 |
| Policy owner: | 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 reserves the right to make additions or alterations to the Policy from time to time and you will be notified of any such additions or alterations.

1. Aims

The North Halifax Grammar School Academy Trust **the Academy Trust** expects all its staff to recognise their obligations in accordance with the Academy Trust's 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 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 who are working within their probationary 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 Academy Trust's Capability Policy may be used concurrently whilst the Academy Trust endeavours to ascertain if the lack of capability is due to misconduct or a 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 Trust's Absence Policy. We may also refer to the Equal Opportunities policy in instances where matters arise from disability.

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 Trust's Child Protection and Safeguarding Policies, for example, by allowing the Local Authority Designated Officer ("**LADO**") to offer advice to the 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 Policy.

The Academy Trust does not encourage the making of anonymous allegations as it can significantly and adversely impact on its means to investigate matters as fully as normal and will only consider anonymous allegations in exceptional circumstances. Any decision to consider anonymous allegations will be at the absolute discretion of the Academy 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 any investigation meeting and/or disciplinary hearing which is arranged under this Policy. Where employees are persistently unable (or unwilling) to attend a disciplinary hearing without good cause, the Academy Trust 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, may be suspended (with full pay) pending investigation.

If, after proper investigation (and a disciplinary hearing has been held), 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 which may justify a lesser sanction (to be exercised at the sole discretion of the Academy Trust).

This Policy 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 (or similar) treatment. All matters will be considered on a case by case basis.

Examples of gross misconduct

4.1 Dishonesty associated with the Academy Trust or the role being undertaken, including but not limited to:

- a) Theft of property belonging to the Academy Trust, any contractor, employee or student, or a member of the public.
- b) Deliberate falsification of timesheets or expenses claims for pecuniary advantage.
- c) Demanding or accepting monies (or other forms of consideration) as a bribe for the use of Academy Trust property, provision of Academy Trust services or the showing of favour on behalf of the Academy Trust.
- 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 Academy Trust from a supplier in which you or a relative have a personal interest (whether financial or not) without first declaring that interest or obtaining prior written permission from the Academy Trust.

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

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

4.4 Wilfully ignoring responsibilities/instructions by the Academy Trust, 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 drinking 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 Trust, other employees or students.

4.7 Acts of violence or vandalism during the course of employment, including but not limited to:

- a) Malicious damage to property belonging to the Academy Trust, any contractors, other employees or student's property.

- b) Actual physical violence towards members of the Academy Trust staff, governors, parents, students, other members of the public inside or outside of work.

4.8 Sexual misconduct at work, including but not limited to:

- a) Sexual misconduct (whether criminal or not); and
- b) Sexual relations or inappropriate relationships with students.

4.9 Off duty misconduct, including but not limited to:

- a) An act of criminal sexual misconduct by an employee who, in the course of their 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 personal contact details to a student without express permission from the Principal;
- e) Any behaviour which may bring the Academy Trust/the employee into disrepute or damage reputation of the same; and
- f) 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 Trust, including but not limited to:

- a) Using the internet to access unseemly or sexually explicit material; and
- 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 may warrant immediate suspension from duty for a first offence, but which could nevertheless lead to dismissal if persistent. This Policy must be followed when dealing with misconduct.

Some more serious acts of misconduct might justify omitting the first stage of sanctions set out in this Policy by issuing a final warning in the first instance, if there is no satisfactory explanation or mitigating circumstances for the Academy Trust to consider. If it can be shown that previous warnings have not been heeded, misconduct could lead to action being taken which may lead to an employee's dismissal. The Academy Trust reserves the right to depart from the sanctions set out in this Policy if it deems the wrongdoing sufficiently serious so as to justify gross misconduct.

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 prior permission) or sufficient cause for absence.
- b) Frequent failure to attend work punctually.
- c) Failure to notify the Academy Trust immediately or as soon as reasonably practicable when absence is due to sickness.
- d) Failure to provide fit notes from a GP 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 any Academy Trust'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 the Academy Trust's property in such a way that 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 Trust by the Special Education Needs Discrimination Act 2001.
- d) Insubordination.
- e) Failure to exercise the 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 any colleague, trustee, governor, student or member of the public. Depending on the seriousness of the behaviour, this could also amount to gross misconduct.

5.5 Victimisation of other employees in the course of their 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 an employee of the Academy Trust.

6. Disciplinary Procedures Relating to Allegations of Misconduct and Gross Misconduct

Investigation

The employee will usually 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 investigatory interview is for the Academy Trust to establish a fair and balanced view of the facts relating to any allegations against the employee, before deciding whether to proceed to a disciplinary hearing. The amount of investigation required will depend on the nature and extent 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 or correspondence.

Investigatory 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 an 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 the findings and give their recommendations as to whether there is a case to answer and whether a disciplinary hearing in accordance with this Policy 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 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 Trust, other employees, students or third parties in allowing the employee to remain at work. Suspension may also be considered if it is felt that the employee's presence at work may hinder the investigation.

Suspension is not intended to be a form of punishment or a form of disciplinary action and does not indicate that the Academy Trust 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 Trust's premises or contact any students or staff, unless you have been authorised to do so by the person named as your contact during this time who may be the Principal, your Line Manager or the Personnel Officer.

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

During any period of 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 Trust (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 to allow 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 Academy Trust considers (following investigation in relation to 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:

- i. the Principal (or the member of staff this has been delegated to by the Principal); or
- ii. where the allegations are sufficiently serious (and/or could lead to dismissal) a staff disciplinary committee made up of two Governors and the Principal ("**Staff Disciplinary Committee**").

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 five working days (seven calendar 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(s).
- 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 if applicable.
- g) The employee's right to provide further documentary evidence if applicable.

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 employee must take all reasonable steps to attend the disciplinary hearing. If the employee or their companion cannot attend the meeting, the employee should let the Academy Trust know as soon as possible and propose a reasonable alternative date and time. If this is within five working days of the original date, the Academy Trust will usually accept it and the meeting will take place then.

If it is not, or the Academy Trust can't accommodate the date proposed by the employee, the Academy Trust will make reasonable attempts to agree another alternative date and time. If the employee is persistently unable or unwilling to attend a disciplinary meeting without good cause, the Academy Trust will make a decision in the employee's absence on the evidence available.

At the disciplinary hearing, the employee (and their representative) will be given a reasonable opportunity to state their case.

Following conclusion of the disciplinary hearing, the Principal (or the Staff Disciplinary Committee as applicable) will consider the representations made by the employee (and any other relevant witnesses) and will aim to get a decision to the employee within ten days together with the reasons for that decision.. 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 written 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 being issued.

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.

Any proceedings under this Policy must remain confidential to the parties concerned and a failure to observe confidentiality could lead to separate disciplinary proceedings being instigated. **Dismissal**

If the Principal or any Staff Disciplinary Committee (as appropriate) decides that a complaint is substantiated on the balance of probabilities, having considered the evidence, they 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. It may also be appropriate in cases of serious misconduct which do not constitute cases of gross misconduct.

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

The action 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 Trust.

If a sanction other than dismissal is to be imposed (e.g. demotion), the employee will, as soon as is reasonably practicable, be provided with written confirmation of the action to be taken, how it is to be implemented, the reason for the action, the date on which it will come into force (if appropriate) and information on the employee's right to appeal. These sanctions may be used in conjunction with a written warning.

Appeals

An employee has a right of appeal against both first and final written warnings. There is no right of appeal against a verbal warning, if one has been given.

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 five working days (seven calendar days if sent outside 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; and
- **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 Trust 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 three Governors who have not previously been involved. They can either uphold the warning or cancel it.

If the employee wishes to appeal against a decision to dismiss, the employee must be given an opportunity to appeal to the Dismissal Appeals Committee of the Governors, made up of three 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; it is not intended to be a re-hearing. In exceptional circumstances, it may be conducted as a complete re-hearing of the matter; however, this will be at the Academy Trust's sole 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 Trust 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 Trust reserves the right to vary the timings contained in this procedure in appropriate circumstances.

Referral

Dependent on the nature of the misconduct, the Academy Trust may be bound to report the misconduct of staff to any relevant external agency e.g. National College for Teaching and Leadership (“**NCTL**”), Teaching Regulation Authority (“**TRA**”), the Police, Health and Safety Executive, Disclosure and Barring Service (“**DBS**”), Designated Officer, the LADO, 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.

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 Trust 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 Policy.

2. Where an employee has a grievance against the way any member of staff, the Principal or panel member has conducted the disciplinary procedure under this Policy, 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.