

DEMAT Disciplinary Procedure and Rules Relating to Misconduct for All DEMAT School Employees

In the development of this policy consideration has been given to Equality and Diversity and Data Protection.

Equality and Diversity

DEMAT is committed to promoting equality of opportunity for all staff and job applicants. We aim to create a supportive and inclusive working environment in which all individuals are able to make best use of their skills, free from discrimination or harassment, and in which all decisions are based on merit. We do not discriminate against staff on the basis of age; race; sex; disability; sexual orientation; gender reassignment; marriage and civil partnership; pregnancy and maternity; religion, faith or belief. (Equality Act 2010 protected characteristics). The principles of non-discrimination and equality of opportunity also apply to the way in which staff and Governors treat visitors, volunteers, contractors and former staff members.

Data Protection

DEMAT will process personal data of staff (which may be held on paper, electronically, or otherwise). DEMAT recognises the need to treat it in an appropriate and lawful manner, in accordance with the Data Protection Act 1998 (DPA) (due to change to GDPR in May 2018).

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For all questions in relation to this policy please contact the DEMAT HR Manager on 01353 656760

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Definitions

“Headteacher” also refers to any other title used to identify the Headteacher where appropriate.

“Senior Manager” refers to anyone on the Senior Leadership/Management Team delegated by the Headteacher or Senior Officer by DEMAT 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/Adviser” refers to a senior manager or an external person appointed by the Headteacher or the Trust.

“Officer” refers to a DEMAT employee within the Central Team.

“Employee” refers to any member of staff, namely teaching, support and central team staff employed to work within DEMAT.

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

“Governor Committee” may be convened to deal with a case where the Headteacher considers that s/he must act in the role of Senior Manager. In this event substitute ‘Headteacher’ with ‘Governor Committee’ throughout the procedure, in these cases replace ‘Senior Manager’ in section 4.1 with ‘Chair of Local Governing Body’. For Central Team employees this may be dealt with by DEMAT Senior Officers.

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

Application the Policy

This policy is to be used by all employees employed by The Diocese of Ely Multi-Academy Trust (DEMAT). The following definitions are included for reference purposes for both School and Central Team staff to enable clarity and transparency when applying this policy.

1. Introduction

- 1.1. This Disciplinary 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.
- 1.2. Examples of the type of conduct that is considered to be misconduct or gross misconduct, which could lead to action under this Disciplinary Procedure, are set out in the Disciplinary Rules which apply to all employees, and should be read in conjunction with this procedure.
- 1.3. This procedure is non-contractual and for guidance only. This procedure applies to all employees. It does not apply to agency workers or contractors.
- 1.4. This 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, or the probationary period is not complete.
- 1.5. In cases against the Headteacher, the Chief Executive Officer from the Trust has power to discipline or dismiss the Headteacher in accordance with the procedure set out below.

2. Equality and Diversity

- 2.1. The procedure will be operated in accordance with DEMATs Equality and Diversity Policy. DEMAT is committed to developing, maintaining and supporting a culture of equality and diversity in employment. The impact of the procedure will be monitored in accordance with the Equality Act 2010.

Part A – Informal Procedure

3. Informal Action

- 3.1. 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).
- 3.2. There is no appeal against management advice given, which will not be placed on the employee's disciplinary record but should be confirmed in a written memorandum.
- 3.3. The written memorandum will set out the misconduct, the improvement that is required and, if appropriate, how this will be reviewed and during what timeframe. The Employee may make written comment on the memorandum if s/he has any objection to the informal action taken. A copy of the memorandum or a note of any informal discussions may be placed on the employee's personnel file.

Part B – Formal Procedure

4. Disciplinary Hearing

4.1. 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:

- a) The date, time and place of the disciplinary hearing.
- b) The allegation(s) and their possible consequences.
- c) The Employee's right to be accompanied by his/her companion.
- 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 Senior Manager.
- f) His/her right to call witnesses on his/her behalf.
- g) The name and position of any HR adviser who will accompany the Senior Manager at the hearing.
- h) The name and position of any note taker.

(At the employee's request, an extra copy of this notice, together with any enclosures, should be provided for his/her companion).

4.2. The employee must advise the Senior Manager of the following at least 3 working days in advance of the hearing:

- a) The name and designation of his/her companion.
- b) Provide any written documentation to be considered.
- c) The names of any witnesses at that he/she wishes to call.
- d) Any special requirements (e.g. disability, language requirements).

4.3. At the disciplinary hearing before the Senior Manager and his/her HR adviser, 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.

4.4. 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:

- a) The sanction (if any) and the period this will remain current.
- b) His/her reasons for the decision.
- c) The change in behaviour required (if relevant) and the likely consequences of further misconduct.
- d) Right of appeal.

5. Formal Disciplinary Action

Where circumstances are considered appropriate, an agreed outcome may be mutually agreed between the parties without the need for a disciplinary hearing. We would recommend that before making any decision in this regard employees should seek the advice of their Trade Union representative. Where an agreed outcome is reached, the employee waives their right to appeal.

5.1. First Written Warning

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.

5.2. Final Written Warning

5.2.1. If 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.

5.2.2. 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.

5.3. Dismissal

5.3.1. If a further complaint is received before the final written warning has expired, the complaint will be referred to a hearing before the Headteacher following the same procedure as in paragraph 5 above. The Headteacher may be accompanied by an HR adviser or Officer.

5.3.2. If the Headteacher decides the complaint is justified, s/he may decide to dismiss the employee. The Headteacher will state the decision, the reasons and inform the employee of his/her right to appeal to an 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 Headteacher will record the outcome of his/her considerations and the names of persons present at the hearing.

5.3.3. The Headteacher will notify DEMAT in writing that the employee is to be dismissed, whether the decision was with or without notice, or with pay in lieu of notice. The Headteacher will give written notice of dismissal to the employee within 14 days of notification by the Headteacher.

5.3.4. If the case is against the Headteacher, 6.3.1 -6.3.3 will be handled by a Senior Officer of DEMAT therefore where Headteacher is stated it should be replaced with Senior Officer.

6. Gross Misconduct

- 6.1. 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 Headteacher or DEMAT Officer that s/he is suspended on full pay pending further investigation of the complaint.
- 6.2. 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 Headteacher.
- 6.3. Following the same procedure as in paragraph 5 above, if on conclusion of the disciplinary hearing the Headteacher considers the complaint constitutes gross misconduct, s/he may decide to dismiss the employee without notice or pay in lieu of notice.
- 6.4. Where a suspension has taken place that suspension may only be lifted by DEMAT, normally an Assistant Director. In the case of a Headteacher by the Chief Operating Officer.

7. Right of Appeal

- 7.1. The employee has a right of appeal against a decision to issue a warning or to dismiss.
- 7.2. Appeals against formal written warnings or dismissal should be made in writing to the Chair of Governors, stating the grounds for appeal in full, within 5 working days of the date of the written decision.
- 7.3. An appeal against a written warning (see paragraph 5.1 and 5.2) will be heard by the Appeal Committee. The panel may have an HR adviser present. The Committee may confirm the written warning, reduce a final written warning to a first written warning, or cancel the written warning.
- 7.4. An appeal against dismissal (see paragraph 5.3) will be to the Appeals Committee, none of whom shall have any previous involvement in the case. The Appeals Committee may have an HR adviser present and a DEMAT Officer.
- 7.5. All appeal hearings will be held as soon as possible and, in normal circumstances, within 10 working days after receipt of the appeal. The Secretary to the local governing body will usually undertake administrative arrangements for any required hearing or meeting. 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.

8. Variation in Disciplinary Action

- 8.1. If appropriate, the Senior Manager may decide to take informal action (as in Part A above) instead of giving a first written warning.
- 8.2. 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.
- 8.3. Rather than dismiss, the Headteacher may decide to issue no sanction or a lesser sanction.
- 8.4. In determining an appropriate sanction, consideration may be given to a change to role/duties which may impact on remuneration.

- 8.5. Where the Appeals 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 Appeals Committee.
- 8.6. In the event that the Appeals Committee decides not to uphold the decision to dismiss, the Employee will be reinstated without loss of pay.

9. Trade Union Representatives

- 9.1. 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.

10. Confidentiality

- 10.1. 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.

Disciplinary Rules

11. Purpose

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

12. 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 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:

- 12.1. 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:
- a) Sexual behaviour towards or relations with a pupil.
 - b) Physically harming a pupil.
 - c) Criminal offences related to or against a child.

- 12.2. 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.
- 12.3. Sexual misconduct, whether at work or not and, whether criminal or not.
- 12.4. Acts of physical or threatened violence, vandalism, bullying or, behaviour which provokes violence.
- 12.5. Possession, use, supply or attempted supply of illegal drugs or any other inappropriate substances, whether illegal or not.
- 12.6. 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.
- 12.7. Deliberately accessing internet sites containing pornographic, offensive or obscene material on our equipment or during working time.
- 12.8. Communicating offensive, obscene or unauthorised sexually explicit material whether verbally, written, in electronic communication, or by social media.
- 12.9. 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.
- 12.10. A serious breach of our Code of Conduct.
- 12.11. A serious act of insubordination.
- 12.12. 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 1954 (Exceptions) Order 1955 (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.
- 12.13. 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.
- 12.14. 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.
- 12.15. Unlawful harassment or victimisation of, or unlawful discrimination against, a pupil, an employee or other worker, a governor, or a member of the public.
- 12.16. 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.
- 12.17. 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.
- 12.18. Bringing the organisation into serious disrepute.

13. Misconduct

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

13.1. 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.

13.2. 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 contractor's property.
 - c) Insubordination.
- 13.3. Obscene language or other offensive behaviour.
- 13.4. Undertaking additional employment outside normal working hours without authorisation.
- 13.5. Breaches of our policies.
- 13.6. Breaches of your contract.

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