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Disciplinary Policy



Contents

Contents	2
Policy Statement	3
1 Introduction	3
1.1 Types of Misconduct	4
1.2 Delegated Authority to take Disciplinary Action	5
1.3 Contact with trade union / professional association	5
1.4 Safeguarding issues	5
2 The Right to Representation	5
3 Suspension and Alternatives	6
3.1 Suspension Interview	7
4 Investigation	8
5 Exploratory Interview	9
6 The Disciplinary Hearing	9
6.1 Format of the Disciplinary Hearing	10
7 The Formal Disciplinary Decision	11
7.1 Dismissal Due to Gross Misconduct	12
8 Appeal	12
8.1 Format of the Appeal Hearing	13
8.2 Appeal Decision	14
History of Policy Changes	14

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Policy Statement

St Margaret's Academy expects of all employees conduct of the highest standard. The disciplinary process is designed to help and encourage employees to achieve and maintain acceptable standards. The purpose of a formal procedure is to ensure that when disciplinary action needs to be taken

- it is both fair and reasonable and
- is applied equitably and with consistency in every case.

The aim will be to resolve issues quickly and at the lowest level of management. In many instances good management practice will prevent recourse to formal disciplinary procedures.

Schedule 14 of the Education Act 1996 requires that Governing Bodies establish disciplinary rules and procedures. These procedures must reflect any legal provisions relating particularly to dismissal, the ACAS Code of Practice and Agreement and the basic requirements of natural justice.

Natural justice requires that:

- (a) When disciplinary procedures are put in motion the employee should know the reason for them;
- (b) The employee should be given an opportunity to offer an explanation and to put his/her version and his/her facts forward before any decision is made;
- (c) A disciplinary hearing should be a fair one and conducted free of bias.

All cases will be treated on an individual basis and the Headteacher and/or Governing Body will deal with each case as appropriate, depending on the facts of the case, and with the overall objective of protecting the Academy / School, its pupils and its employees

1 Introduction

Disciplinary matters can be complex and it is advised that advice be sought from Human Resources prior to commencing any disciplinary process.

It is essential when managing disciplinary matters that a clear distinction is made between conduct and issues related to capability.

This document provides a model Disciplinary Procedure for dealing with conduct issues which Governing Bodies are recommended to adopt. It should be used in conjunction with the Guidance for Managing a Disciplinary Hearing. A separate model Capability Procedure is available to deal with issues of performance (capability).

This policy respects that in the case of disciplinary action, the employee has a right to be interviewed and must be given an adequate opportunity to make representation. The employee should be advised of his/her right to be accompanied during the interview by a Trade Union /Professional Association or other Representative and should be encouraged to exercise that right.

The Academy acknowledges that failure to establish and to follow a fair procedure could result in a claim for unfair dismissal being brought to an Employment Tribunal. The Academy accepts that it is the responsibility of the Governing Body to ensure that all employees are issued with all policies relating to conduct and capability procedures. This will be done when the employee is issued with a contract of employment and at any time when disciplinary proceedings are being considered.

Academy Disciplinary Procedure: Conduct

This document has been adopted by the Governing Body, being the relevant body, as the procedure for St Margaret's Academy. This procedure will cover **conduct**, not issues related to capability which should be handled under the Academy Capability Procedure.

1.1 Types of Misconduct

Misconduct might be a series of minor offences or a single incident. Misconduct falls into two categories: general misconduct and gross misconduct. The nature and severity of the alleged offence will determine the form of disciplinary action invoked. Gross misconduct will result in either a final written warning or summary dismissal, which may be without notice or with pay in lieu of notice when the nature of the case is such that the Academy cannot allow the individual to continue at work.

General Misconduct may include:

- Poor timekeeping
- Unjustifiable or unauthorised absence from work
- Misuse or unauthorised use of Academy equipment, materials or property
- Misuse of the Academy's internet and e-mail facilities
- Failure to comply with a lawful and reasonable request from a Line Manager or Supervisor
- Failure to comply with the Academy's Code of Conduct for Employees where applicable.
- Failure to comply with Academy policies and procedures

Gross Misconduct – may include serious or repeated occasions of the above, or:

- Serious breach relating to the Safeguarding of Children
- Theft or Malicious damage
- Submission of false claims for financial reimbursement
- Illegal use of Academy equipment
- Threatening behaviour, assault of another employee or member of the public

- Sexual misconduct
- Racial misconduct
- Harassment on grounds of Race, Gender, Disability, Sexual orientation, Age, Religion or Philosophical belief
- Disregard for work rules, particularly relating to safe practices at work
- Serious breach of the Academy's Acceptable Behaviour Policy
- Serious breach of the Academy's Equal Opportunities Policy
- Serious breach of Health & Safety regulations or rules
- Serious breach of the Data Protection Act
- Incapacity through drink or drugs, though consideration must first be given to any Drug and Alcohol Misuse Policy.

All the above are examples only and are not intended as a complete list of conduct or behaviours which may be considered to be misconduct.

1.2 Delegated Authority to take Disciplinary Action

The Governing Body has delegated to the Headteacher the authority to take disciplinary action in all cases up to those involving possible dismissal. Where the Governors have not delegated authority for dismissals a Committee will be convened. In cases involving possible dismissal authority is delegated to a committee comprising of the Headteacher and one or more Governors (or Directors)

In the event of the Headteacher being the subject of disciplinary action, the Governing Body will be responsible for the disciplinary procedure. In these circumstances, the Academy's Human Resources provider will work closely with Governors to support the process

1.3 Contact with trade union / professional association

If there is the possibility of disciplinary action being taken, the member of staff concerned should be encouraged to consult with his/her trade union/professional association. No disciplinary action will be taken against a member of staff who is a recognised trade union representative (including school representatives) until the circumstances of the case have been discussed with a full-time official of the union concerned. (It is advised that Human Resources be contacted in this situation). Acts to neutralise the situation, such as suspension, can however be taken.

1.4 Safeguarding issues

If the disciplinary matter concerned involves a potential child protection issue the Academy will take appropriate steps in accordance with Local Authority's Children's Services team prior to commencing an internal disciplinary process.

2 The Right to Representation

Employees have a statutory right to be accompanied by a representative at formal disciplinary and appeal hearings. There is no statutory right to be accompanied at informal discussions or investigatory meetings however this procedure permits a representative to attend investigatory meetings.

The representative may be a colleague, trade union representative or an official employed by a trade union. A trade union representative need not be an employee of the Academy but if they are not a fellow worker or an employee of the union the Academy may insist on them being certified by their union as being trained to accompany an employee at a disciplinary or appeal hearing.

The representative will be able to address the hearing, put the employee's case and sum it up and respond on the employee's behalf to any views expressed at the hearing. The representative and employee are also able to confer during the hearing. However, the representative is not permitted to answer questions on behalf of the employee or address the hearing if the employee does not wish it, or prevent the employer from explaining their case.

Partners, spouses, friends or legal representatives have no statutory or contractual right to be able to accompany individuals. In exceptional circumstances consideration may be given to the employee bringing a companion rather than a representative. This person would not be eligible to represent the employee at the meeting.

There is a right to legal representation at any disciplinary hearing, where the potential outcome of any disciplinary action could see the individual being barred from working with children. (Note – the Academy is advised to seek HR advice in such cases).

Individuals should confirm before the meeting whether or not they will be accompanied and which witnesses they would like to call.

Reasonable adjustments may be needed during the process if an employee, or their representative, has a disability, for example the provision of a support worker or advocate with knowledge of the disability and its effects. Consideration should also be given to employees who have language or communication difficulties to ensure that they have fair representation throughout the process. This may include ensuring that reasonable adjustments are made in the case of a disabled employee, i.e. by ensuring that the meeting is conducted in a room allowing appropriate access, or that some form of translation service or alternative format is provided for employees where English is not their first language.

3 Suspension and Alternatives

The Headteacher may suspend a member of staff. In cases where the Headteacher is the subject of the disciplinary process the Chair of Governors (or equivalent) can take a decision to suspend.

Suspension will be considered:

- Where this would allow a more objective examination of the circumstances.

- When alleged misconduct is sufficiently serious that the outcome may be dismissal. Where a member of staff is the subject of a police investigation and the alleged offence is considered relevant to his/her duties.
- Where there is a reasonable ground to believe that it would seriously affect the interests of the school/ academy and/or the individual if s/he were to remain at work.

Suspension, whilst not a disciplinary act, is a very serious step and will therefore be considered carefully before being taken. Suspension is a neutral act and the employee will remain on full pay throughout the duration of the suspension. There may also be occasions when the employee is not suspended but is requested to stay away from the school on full pay. In response to such a request the member of staff should be advised to seek advice from his/her Trade Union/Professional Association.

Where through exceptional circumstances it is not practical to apply a suspension e.g: if a person authorised to impose a suspension is not available, the most senior member of staff present at the academy / school will have the authority to request an employee to leave work immediately and stay away on full pay until further instructed by the Headteacher. A decision will be made as quickly as possible as to whether the employee is to be formally suspended or reinstated.

Where it is appropriate to consider alternatives to suspension that will also allow for an objective investigation, alternatives may include:

- A temporary transfer to alternative duties
- Working from home or other location
- A period of leave

3.1 Suspension Interview

The employee will be interviewed at the time when consideration is being given to suspension and must be given an adequate opportunity to offer reasons why he/she should not be suspended. The interview should cover the allegations, notification that an investigation will be carried out and the likely timescale. The employee has the right to be represented, usually by the Union Representative, at this interview.

Where, following an interview, a suspension is imposed the following steps will be taken.

- a) A colleague from the academy who is unconnected with the issue will be given responsibility for maintaining contact with the member of staff during the period of his/her suspension.
- b) The suspension will be confirmed in writing within 5 working days, including details of the reasons and the anticipated timescale before the employee can expect to be advised of any further action.
- c) The suspension will be reported as quickly as possible to the Governing Body. This should be no more than a brief summary of the facts to date – the name of the employee, brief nature of the allegations without amplification and the next step in the process. Discussions beyond this will be avoided so as to prevent the possibility of prejudice and bias should the Governors be required to have involvement more formally in a disciplinary hearing or appeal.

- d) The length of the suspension (or any alternative action short of suspension that still allows for an investigation to take place) will be kept to a minimum so as to prevent the possibility of damaging the education of pupils and the well being of the member of staff concerned. The length of the suspension (or other action) will therefore be closely monitored for its reasonableness.
- e) The details of the suspension will be kept confidential, however, in the those exceptional circumstances where the media takes an interest in the matter, the Headteacher and/or Governors will take appropriate advice before making any comments or issuing a statement. Wherever practical the member of staff will be given a copy of any proposed statement, prior to it being issued.

Where suspension is imposed it can only be removed by the Governing Body

4 Investigation

If the Headteacher is exercising delegated responsibility for dealing with staffing matters including dismissals he/she will normally commission an investigation which will be undertaken by the Deputy Headteacher or another senior member of staff.

Where it would be inappropriate for the Headteacher, Deputy Headteacher or other senior member of staff to conduct the investigation, the Academy is advised to contact Human Resources to discuss alternatives e.g. local authority officer, diocesan representative.

Where, as part of an investigation, it is necessary to interview pupils, their parents/carers will be advised and their consent obtained. The member of staff's representative will have the opportunity to be present at the interview.

Please note: wherever possible pupils should be interviewed as part of the investigation to avoid the need for their attendance at a disciplinary hearing. Agreement should be sought amongst those present that the notes accurately reflect the pupil's statement.

The Investigating Officer will ensure that other people being interviewed are told the nature and purpose of the investigation, that written notes or statements will be taken and that these may be used at a disciplinary hearing. Following the interview, a copy of the notes taken at each stage of the process will be given to the person who has been interviewed, to confirm that the responses recorded are an accurate record and sign them, or amend as necessary.

At the conclusion of the Investigation, a report will be produced by the investigating officer, containing all the statements taken and a recommendation given as to next steps (i.e. that no further action is recommended or a disciplinary hearing is recommended.) The Investigating Officer's report on the outcome of the investigation will enable the person considering the allegation to decide whether or not to proceed with a formal hearing. The employee who is the subject of the investigation will be informed as

soon as possible after the investigation is completed about next steps – i.e. will the matter progress to a formal disciplinary hearing.

Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

5 Exploratory Interview

It should be remembered that the exploratory interview is not a disciplinary hearing within the procedure. The exploratory interview forms part of the investigation process (see Section 4 – ‘Investigation’ above)

An investigating officer will be appointed to hold an exploratory interview with the member of staff against whom the complaint/allegation has been made.

At the time of being asked to attend an exploratory interview the member of staff must be informed in writing of the allegations being made and of their right to be represented at the interview. In addition, the member of staff must be issued with a copy of the Academy’s current disciplinary procedure.

If the complaint or allegation is against the Headteacher, the Chair of Governors will be responsible for initiating the exploratory interview.

The purpose of the exploratory interview will be to:-

- a) Establish relevant information and determine whether further investigation is needed before a decision is taken about whether or not a formal hearing is necessary.
- b) Provide the member of staff with an opportunity to respond at an early stage.
- c) Explain what further steps, if any, are intended to be taken and the likely timescale.

Note – Although there is no statutory right to be accompanied at informal discussions or investigatory meetings this procedure permits a representative to attend investigatory meetings (see Section 2 – *Right to Representation* – above).

6 The Disciplinary Hearing

A disciplinary hearing is not a court of law and the tests to be applied are different, namely reasonable grounds for believing that a member of staff was responsible for the act or omission as alleged, and satisfaction that as much investigation into the matter was carried out as was reasonable.

During the hearing either side will be entitled to request adjournment for consultation. Any reasonable request should be allowed. Witnesses will attend for only that part of the hearing where they are required to give evidence and answer questions.

If the member of staff is to be dismissed, those responsible for this decision should be satisfied that dismissal is a reasonable course of action to take.

Case law has determined the right to legal representation at a disciplinary hearing or appeal where the outcome could see the individual being barred from working with children. In such cases the school should contact Human Resources for advice.

Full notes must be kept of the proceedings given that there may be a need to produce the documentation used in arriving at the decision, both at any subsequent internal appeal and in the event of a claim to an Employment Tribunal. In cases heard by a First Committee of Governors, minutes of the meetings, which will be held under Confidential Part II arrangements, will simply record the decision reached. In both the notes and the minutes, individuals should be identified by their initials only.

The member of staff will be given at least 10 working days' notice of the hearing in writing. The letter will set out the following:

- The date, time, place of hearing, who will be involved, the nature of the complaint being made, copies of any supporting information, including any witness statements taken as part of an investigation.
- The potential consequences of any disciplinary action (i.e. of the allegations are very serious, that dismissal could be an outcome)
- Notification of the right to have a representative present at the hearing.
- Details of what to do should they, or their Trade Union on their behalf, want to submit any additional information or requests prior to the hearing, i.e. (this should be provided at least two working days in advance of the hearing to the Disciplining Officer although in exceptional circumstances the disciplining officer may accept late submissions provided they have been informed that there will be additional information and understand the reasons for this).
- That should they wish to invite any witnesses they must be notified in sufficient time to allow them to attend in light of working patterns.

This letter should be sent to the employee at least 10 working days prior to the date of the hearing. Accompanying information should be sent at that time or as soon as it becomes available, and in any case prior to the date of the hearing.

In some circumstances, with the agreement of both sides, it may be acceptable to hold a hearing without giving the 10 working days notice referred to above e.g. to conclude a disciplinary process prior to a school holiday.

6.1 Format of the Disciplinary Hearing

- a) The Headteacher or Chairperson of the Hearing will introduce the parties and give brief details of the allegations made.
- b) The Investigating Officer will then be asked to set out the allegations and to present the investigation report. Witnesses may then be called to give evidence in the presence of the member of staff and his representative. The member of staff and his/her representative will have the opportunity to put questions to the Investigating officer and/or witnesses.
- c) The member of staff and his/her representative will be invited to put his/her case, calling witnesses as necessary. The Investigating Officer will have the opportunity to put questions of the member of staff, his/her representative and/or witnesses.
- d) The Headteacher / or Governors hearing the allegations will have the opportunity to ask questions of both parties and their witnesses throughout the hearing.
- e) Where applicable, the Human Resources Advisor may wish to ask questions and offer advice as necessary.
- f) Both parties will have the opportunity to summarise their cases, provided new information is not introduced, with the member of staff or his representative making the final submission.
- g) Those who are not directly responsible for making a decision regarding the outcome of the hearing, other than the Human Resources Advisor will withdraw to enable a decision to be reached. If further clarification is required on any point, all the parties will be recalled.
- h) Having considered the matter and ensured that the decision reached is a reasonable response to the circumstances, the Headteacher or Chairperson will announce the decision orally to both parties. Where the Headteacher or Governors need further time to consider the outcome, they can adjourn the decision but must notify the member of staff within 2 working days.
- i) The decision will be confirmed in writing within 5 working days. Where formal disciplinary action is taken, the member of staff will be advised of the grounds of the action taken and, where appropriate, how long any warning will remain on file and the consequences of any recurrence together with details of any remedial action required. The letter will also contain details of their right of appeal.

7 The Formal Disciplinary Decision

Following a Disciplinary hearing there must be a decision on what action, if any, should be taken. It must be appropriate to the circumstances of the case and the seriousness of the "offence".

The following courses of action are available:

- a) to take no action;

- b) a **First written warning** i.e: where there has been a repeated minor breach in conduct or a first but more serious breach of discipline. The employee should be advised that a failure to improve or a repetition of the misconduct may result in further disciplinary action; there is a right to appeal a formal written warning.
- c) a **Final written warning** i.e: where there has been an insufficient response to previous warnings and conduct is still unsatisfactory or in the case of a first but serious breach of discipline. This warning must state that failure to improve or any repetition may result in dismissal; there is a right to appeal against a final written warning.
- d) **Dismissal** with or without notice.

7.1 Dismissal Due to Gross Misconduct

The effective date of termination for an employee who is summarily dismissed (without notice) for gross misconduct is the date that the employee is made aware of the termination.

Employees on NJC terms and conditions (Green Book) due any annual leave entitlement up until the point of dismissal will only be entitled to receive payment for statutory annual leave, i.e. 28 days (to include Bank Holidays) and not to the full contractual entitlement as detailed in their terms and conditions of employment.

8 Appeal

An appeal is not a re-hearing of the case but an opportunity for the appellant to make representations to someone who was not involved in the original decision. Appeals will be conducted by the Appeals Committee, who will be responsible for ensuring that:

- An adequate investigation took place;
- The member of staff was given a chance to make representation and that their response was given fair consideration against the allegations being made;
- Having regard to all the circumstances the decision was reasonable;

It is open to the Appeals Committee to decide:-

- (a) To adjourn, pending reconsideration by the Headteacher / First Committee where a significant amount of fresh evidence is brought;
- (b) To uphold the appeal;
- (c) To determine that some other lesser penalty should apply;
- (d) To reject the appeal.

The decision of the Appeals Committee will be final within the procedures of the Academy and there will be no further right of appeal.

The member of staff has the right to appeal against a decision to issue a first written warning, to issue a final written warning or notice of dismissal.

A member of staff wishing to exercise his/her right of appeal must notify the Clerk to the Governors, in writing, within 10 working days of receipt of the written confirmation of disciplinary action. The grounds on which the appeal will be made, and any supporting information, should be sent at that time, or as soon as possible, and in any case prior to the date of the appeal hearing.

An Appeals Committee of Governors will be convened to hear the appeal. *Note: The appeal will be to a Committee of the Governing Body consisting of governors who have not taken part in the original decision. The Appeals Committee must contain at least an equivalent number of Governors to the First Committee (Disciplinary Committee), none of whom were party to the original decision.*

The member of staff will be given at least 10 working days notice of the hearing, and will be provided with copies of any additional documents to be considered by the Appeals Committee, e.g: the notes of the original hearing – where it is not possible to send any additional documents when giving the member of staff notice of the hearing they must be given to the member of staff no later than 5 days prior to the hearing. It is recommended that a Human Resources Advisor be invited to attend.

8.1 Format of the Appeal Hearing

The format of the appeal will be as follows:

- a) The Headteacher/Governors Committee's representative will put the case in the presence of the Employee and/or his/her representative and may call witnesses.
- b) The Employee and/or his/her representative will have the opportunity to ask questions of the Headteacher/Governors Committee's representative on the evidence given by him/her or by any witness called.
- c) The Appeals Committee may ask questions of the Headteacher/Governors Committee's representative and witnesses.
- d) The Employee and/or representative will put his/her case in the presence of the Headteacher/Governors Committee's representative and may call witnesses.
- e) The Headteacher/Governors Committee's representative will have the opportunity to ask questions of the Employee and any witnesses.
- f) The Appeals Committee may ask questions of the Employee and any witnesses.
- g) The Human Resources Advisor (where present) may ask questions and offer advice as necessary.
- h) The Headteacher/Governors Committee's representative will have an opportunity to sum up his/her case but will not be allowed to introduce any new evidence.

- i) The Employee and/or representative will have an opportunity to sum up his/her case but will not be allowed to introduce any new evidence.
- j) Those who are not part of the Committee, other than the Human Resources Advisor will withdraw to enable the Committee to reach a decision. If further clarification is required on any point, all the parties will be recalled.
- k) Having considered the matter the Appeals Committee Chairperson will announce the decision orally to both parties.

8.2 Appeal Decision

The decision will be confirmed in writing within 5 working days. If the decision is anything other than to uphold the appeal, the letter will need to clarify the grounds for the action taken, how long the warning will remain on file, the consequences of any reoccurrence and, where appropriate, any remedial action required. If the appeal is upheld, the letter will only convey the grounds for the action taken.

History of Policy Changes

Date	Page	Details of Change	Agreed by:
Sept 2015		Policy order change (specifically Timing of Exploratory interview)	Schools' JCC