



SOLENT SPECIAL EDUCATION TRUST (SSET) “THE TRUST”

Title: Disciplinary Policy and Procedure

Lead Reviewer: Human Resources and Administration
Manager

Who this is aimed at: All Staff

Version	Reason for Change
V1	Updated April 2020
V2	Reviewed February 2023

Date Initially Implemented	1 st May 2020
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Policy Statement

The purpose of Solent Special Education Trust's Disciplinary Policy and Procedure is to be corrective rather than punitive. Solent Special Education Trust requires good standards of discipline from employees along with satisfactory standards of work.

Solent Special Education Trust's Disciplinary Policy and Procedure is to encourage employees to achieve and maintain acceptable standards of conduct and to ensure consistent and fair treatment for all employees. Therefore, this Policy will be applied to any misconduct and applies to all employees.

Cases involving poor performance caused by ill-health or lack of capability are dealt with under separate procedures.

This Policy and Procedure does not form part of any employee's contract of employment, and it may be amended at any time.

Application

This Policy and Procedure applies to all employees directly employed by the Trust, including the Headteachers.

Support employees whose service is terminated during or at the end of their probationary period are not covered by this Disciplinary Policy and Procedure.

In the case of volunteers, the Trust will normally apply the principles of this policy when investigating allegations and determining outcomes. In the case of allegations with safeguarding implications, the Trust will seek advice and allegations found to be proven will be referred to the relevant external agencies.

Roles and Responsibilities

Headteachers will:

- Manage and monitor employees' conduct.

- Deal with allegations of minor acts of misconduct informally, promptly and by appropriate counselling and instruction.
- Invoke the disciplinary process promptly where necessary.
- Remind employees of their right to be accompanied under the procedure.
- Ensure the employee is aware of the status of any meeting or hearing held under this procedure.
- Provide the employee with a copy of this procedure if any action is contemplated under the formal stages of the procedure (i.e. other than informal action).
- Comply with confidentiality requirements.

Employees must:

- Comply with the standards set out in each School's Code of Conduct, and any local rules and regulations required for carrying out their job safely and effectively on behalf of the Trust.
- Comply with relevant statutory professional standards (e.g. the Teachers' Standards)
- Comply with all reasonable management instructions.
- Comply with safeguarding and confidentiality requirements.

Trustees will:

- Have a statutory responsibility to determine the disciplinary rules and disciplinary procedures to be followed when dealing with alleged misconduct within the Trust.
- Be expected, under the School Staffing Regulations made under the Education Act 2002, to delegate all decisions under the Disciplinary Policy and Procedure, including dismissal, to the Headteacher.
- Be responsible for handling allegations of misconduct against the Headteacher.

Right to be Accompanied

- Employees have a legal right to be accompanied by a companion where a disciplinary meeting could result in a formal warning being issued or some other disciplinary action being taken.
- Under this policy, employees can be accompanied or represented either by an accredited trade union representative or a work

colleague of their choice at meetings held under all formal stages of the disciplinary procedure.

- The employee must notify the Headteacher in advance of meetings and hearings of their wish to be accompanied, and the name and role of their chosen companion.
- The Headteacher has the right to request that the employee find an alternative companion if the individual is a witness in the case.
- The companion should be allowed to address the meeting to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing.

The companion does not, however, have the right to answer questions on the employee's behalf, address the meeting if the employee does not wish it or prevent the Trust from explaining their case.

Action in Respect of Trade Union Representatives

Formal action under this procedure will not be taken in respect of an accredited representative of a professional association/trade union until the Headteacher or Human Resources has informed the appropriate fulltime professional association/trade union official of the disciplinary action that is being contemplated.

Referring Conduct Issues to External Organisations

Where it is required to do so, the Trust will refer conduct issues/allegations to the appropriate external professional, public and statutory bodies. This includes referrals to the Disclosure and Barring Service and/or the Teaching Regulation Agency in relevant circumstances.

Review

This Policy will be reviewed regularly to ensure it complies with current employment legislation and the requirements of the Trust.

Informal Action

Wherever possible, the Headteacher, or relevant manager, will seek to deal with misconduct by informal counselling. Any resulting professional advice and/or management instruction may be confirmed in writing to the employee. Except in cases of serious or gross misconduct, the formal procedure should not be used as a first resort.

Where informal action does not lead to the required improvement in conduct or the alleged misconduct is sufficiently serious, the following formal stages of the Disciplinary Procedure will be used.

Safeguarding

In cases where the alleged misconduct of an employee or volunteer involves harm or risk of harm to a child or vulnerable adult, the Headteacher must immediately notify the Local Authority Designated Officer (LADO).

The Headteacher should not proceed with an investigation into a safeguarding matter until advice has been received from the LADO or any other authorities that may be involved (e.g. the Police or Children's Social Care).

Criminal Charges or Convictions Outside Employment

These should not be treated as automatic reasons for dismissal. The main consideration should be whether the offence is one that makes the employee unsuitable for their type of work. In all cases, Headteachers and/or the disciplinary panel, having considered all the facts, will need to consider whether the conduct is sufficiently serious to warrant invoking the disciplinary procedure. In addition, employees should not be dismissed solely because a charge against them is pending or because they are absent as a result of being remanded in custody.

Disciplinary Procedure

Investigation

The Headteacher will notify the employee that an investigation will be undertaken into the allegation(s) of misconduct.

The Headteacher will undertake an investigation into allegations of misconduct or nominate a senior member of staff to act as Investigating Officer. Where possible, it is preferable that a nominated Investigating Officer undertakes the investigation, as this allows the Headteacher to chair any resulting disciplinary hearing.

The investigation must take priority over other work issues and should be completed in a timely manner.

The level of investigation required will depend upon the nature and seriousness of the allegation(s).

When the investigation is complete the Investigating Officer will conclude that either:

- No further action should be taken (where the allegation is not supported by the evidence); or
- Counselling/management instruction or advice/training should be given (where misconduct is deemed to be of a minor nature); or
- The matter should be referred for consideration at a disciplinary hearing where misconduct is deemed serious enough to warrant a formal disciplinary sanction.

The Investigating Officer or Human Resources will write to the employee to inform him/her of the outcome of the investigation.

Where the matter is referred to a hearing, a disciplinary hearing will be arranged without unreasonable delay.

Where the allegation is against the Headteacher, the Chair of Trustees may choose to investigate the matter personally or may appoint a member of the Trustees or Chair of the Governors to investigate the allegation.

Suspension

In cases of alleged gross misconduct, once it has been established there is a clear case to answer, an employee can be suspended from work on

full contractual pay at any stage of the investigation, if the Headteacher (or Chair of Trustees in the case of an allegation against the Headteacher) believes that any of the following circumstances apply:

- The investigation could be compromised by the continued presence of the employee in the Trust;
- There is a serious risk to pupils, other employees, or to Trust resources or property, by the employee remaining in the Trust;
- The allegations relate to safeguarding issues;
- The reputation of the Trust could be compromised by keeping the employee at work.

The employee will be suspended from duty by the Headteacher or a senior manager if appropriate. The Headteacher will inform the Chair of the Governors of any suspension.

The Headteacher will consult with Human Resources wherever possible before suspending an employee from duty.

Suspension is not a form of disciplinary action or an indication that the allegations made are assumed to be true. In some cases, it may be possible to accommodate a temporary reassignment to other duties or restriction of current duties rather than suspension. This should be considered on a case by case basis.

In normal circumstances, suspension or temporary redeployment will be kept to a minimum and this should be considered on a case by case basis. The Headteacher must explain the circumstances and conditions of the suspension to the employee and confirm this information in writing as soon as possible.

Whilst suspended, the employee must make themselves available for meetings on request. They should not contact anyone at the Trust apart from their identified Trust contact/trade union representative, unless specific approval to contact others has been requested and agreed.

Notification of Disciplinary Hearing

The employee must be notified in writing at least 5 days before the hearing of:

- The date, time and place of the hearing.
- Who will be conducting the hearing.
- The nature of the allegations. □ The right to be accompanied.
- The right to call witnesses and to submit documentary evidence. □ Whether dismissal is a potential outcome of the hearing.

The letter will give a date, usually two working days prior to the hearing, for copies of any written evidence to be presented at the hearing to be exchanged.

Employees and their companions should make every effort to attend the hearing. If the employee or their companion is unable to attend a disciplinary hearing on the notified date and has informed the Headteacher, the hearing should be rearranged within a reasonable time frame. If the employee fails to attend the rescheduled hearing, only under exceptional circumstances will a further date be agreed. Failure to attend a rescheduled hearing may result in the Disciplinary Panel conducting the hearing and making a decision on the evidence available, without the employee's presence.

Disciplinary Hearing

The disciplinary hearing will normally be conducted by a disciplinary panel comprising the Headteacher and another senior manager. However, where the Headteacher has performed the role of Investigating Officer or has otherwise been actively involved in the investigation the hearing will be conducted by a panel including senior managers, trustees and/or governors.

The employee will be given the opportunity to set out their case and answer any allegations that have been made, including presenting evidence. Witnesses can be called by either side as part of the case.

The employee and their companion can question the case put forward by the Trust. The disciplinary panel may question any evidence presented. The disciplinary panel will consider all the evidence presented and determine whether there are reasonable grounds to believe that the alleged act or behaviour occurred and, if so, what level of disciplinary sanction, if any, should be applied.

Confirmation of Disciplinary Outcome

The panel will hold a short adjournment and, if possible, a decision will be given verbally at the end of the hearing to the employee.

If a longer adjournment is required, the hearing will be concluded, and arrangements made to notify the employee (in person or by telephone) of the outcome within five working days.

In either case, the outcome will be confirmed in writing to the employee, along with the right of appeal, within 5 working days of the hearing.

The outcome of the hearing can be one of the following:

- Allegation not proven.
- Written warning (remaining on file for 12 months).
- Final written warning (remaining on file for 12 months). Dismissal with notice (remaining on file for the duration of the notice period). This is only applicable where an allegation of misconduct, not amounting to gross misconduct, has been proven and the employee has a final written warning in effect with dismissal being the next level of disciplinary sanction.
- Summary dismissal without notice (immediate and without pay in lieu).

Gross misconduct may be defined as conduct warranting summary dismissal and the following list provides some examples of offences which are normally regarded as gross misconduct. This list is not exhaustive:

- Theft, fraud or embezzlement in relation to the employee's employment.
- Offences relating to child and vulnerable adult protection and safeguarding policy.
- Failure to report any changes to DBS disclosure.
Fighting and offences involving violence against others while at work. (An employee is entitled to use such force as is necessary and reasonable to defend themselves where they did not initiate such action.
- Serious bullying, harassment or abusive behaviour.
- Grossly indecent behaviour.

- Serious acts of insubordination and/or continuing refusal to carry out legitimate instructions.
- Serious breach of a professional code of conduct.
- Misuse of Trust property or name and/or bringing the Trust into serious disrepute.
- Serious incapability while on duty brought on by alcohol or other substances.
- Possession or use of illicit drugs.
- Serious negligence which causes or might cause unacceptable loss, damage or injury.
- Serious breach of client confidentiality or data protection (subject to the Public Interest (Disclosure) Act 1998).
- Unauthorised entry to, deletion of, or tampering with computer systems and records.
- Unauthorised removal of, or malicious damage to, the property of the Trust, of its employees or of persons in relation to whom the Trust and/or its employees are in a position of trust.
- Vandalism or sabotage to Trust premises or equipment.
- Falsification of time sheets, absence records, travel and expense claims in relation to their own, any fellow employee or person in care within the Trust.
- Sexual offences and sexual misconduct while at work.
- Undertaking private work on the premises and/or in working hours without express permission.
- Working in competition.
- Serious breaches of safety regulations endangering other persons, including deliberate damage to, neglect of, or inappropriate use of safety equipment.

The above list is neither exclusive nor exhaustive and therefore does not preclude the possibility of dismissal for other offences of similar gravity not specified. Notwithstanding the above reference to summary dismissal in relation to gross misconduct, the disciplinary panel may arrive at a decision other than summary dismissal having regard to all the circumstances.

Exceptionally, there may be circumstances where the misconduct is so serious that it cannot realistically be disregarded for future disciplinary purposes. If this is the case, then the employee must be made aware that the final written warning will never be removed, and any recurrence will lead to dismissal. This is in relation to safeguarding concerns.

Where an existing warning is already in place, the level of sanction imposed on a new occasion will be the same or higher than the one already in effect.

If the panel decides a warning should be issued, the written confirmation will include;

- The nature and level of the warning.
- The reasons why it is being given.
- The standards of conduct required in future.
- The consequences of future misconduct.
- The right of appeal.

If the disciplinary panel determines the employee should be dismissed, the written confirmation will include the date of the end of the contract, details of any notice period, the reasons for the decision and the employee's right of appeal.

The Headteacher must formally report any instances of dismissal to the Chair of the Governors. Such a report is limited to a notification of the decision only. Should an appeal be lodged it is important that members of the Trustee Board have no detailed prior knowledge of the disciplinary case itself so that they can ensure an unbiased appeal hearing.

Other Sanctions

Other sanctions may also be considered, although in all cases advice must be sought from Human Resources. Possible alternative sanctions include transfer to another post or demotion with or without protection of salary.

Appeal

The employee may appeal against:

- The finding that they committed the misconduct.
- The level of disciplinary sanction imposed.
- The decision to dismiss.

The employee's appeal must be made in writing to the Headteacher setting out the grounds for the appeal and must be received within 5 working days of the employee being notified of the outcome in writing.

An appeal hearing will be arranged without unreasonable delay and normally within 14 working days of receiving the notice of appeal or as soon as practically possible thereafter. The employee will be notified of the arrangements in writing. The employee has a statutory right to be accompanied at the appeal hearing.

The appeal hearing will be chaired by an Appeal Panel, who has no previous involvement in the disciplinary case.

The outcome of the appeal will be confirmed in writing to the employee within 10 working days of the hearing.

There will be no further internal right of appeal. The appeal decision will be final and may be:

- To confirm the sanction.
- To decrease the sanction.
- To remove the sanction.

Arrangements for Dealing with Allegations against the Headteachers

The procedure for dealing with allegations of misconduct against the Headteacher will be as set out above, with the following variations. If it is necessary, the Headteacher will be suspended from duty by the Chair of Trustees in consultation with the Chair of Governors.

The Chair of Trustees will appoint an Investigating Officer to investigate the allegation. This may be an external investigator with relevant experience.

At any disciplinary hearing, the disciplinary case for action short of dismissal will be heard by a disciplinary panel of at least three governors and/or trustees.

At any disciplinary hearing where dismissal is a potential outcome, the case will be heard by a disciplinary panel of at least three governors and/or trustees, one of whom should be the Vice Chair of the Governors. In the event of an appeal, a panel of at least three governors and/or trustees, with no previous involvement in the case, will consider the appeal. This will normally be chaired by the Chair of the Governors.

Confidentiality

As part of any disciplinary process those involved may have access to information that is of a personal, confidential, sensitive and/ or proprietary nature, for the purpose of fulfilling procedural obligations. For example: personal information related to staff such as names, e-mail addresses, salaries, employment information, and/or service issues, data, financial information ("confidential information").

All involved with any application of the disciplinary policy and procedure must:

- Hold all confidential information in trust and strict confidence and agree that it shall be used only for the purposes required to fulfil employment obligations, and shall not be used for any other purpose, or disclosed to any third party.
- Keep any confidential information in a physically secure location.
- Maintain the absolute confidentiality of personal and confidential information in recognition of the privacy rights of others at all times, and in both professional and social situations.
- Comply with all privacy laws and regulations, which apply to the collection, use and disclosure of personal information
- At the conclusion of any discussions, or upon demand by management, return all confidential information, including prototypes, code, written notes, photographs, sketches, notes taken, to Trust possession.
- Not disclose confidential, personal and/or proprietary information to any employee, consultant or third party unless they agree to execute and be bound by the terms of this agreement and have been approved by the Trust or Trade Union in an official, legal capacity.

A breach of confidentiality or misuse of information could result in disciplinary action up to and including termination of employment.

Related Documents

This document should be read in conjunction with other Trust Policies, including those relating to Grievance Policy and Procedure.

Complaints

Any employee is entitled to make a complaint in respect of any aspect of this Policy and Procedure through the Trust's Grievance Policy and Procedure.