



Disciplinary Policy

12/2021- 2023

Contents

Policy Contents	Page Number
Version Updates	1
Scheme of Delegation	1
Definitions	2
Associated Policies & Documents	2
Introduction	3
Informal Action <i>(including Management Advice Notes)</i>	3
Serious Matters, Incidents or Allegations <i>(including suspension & investigations)</i>	4
Formal Action	5
Outcomes	7
Right of Appeal	8
Trade Union Representatives	9
Confidentiality	9
Appendices <i>(examples of gross misconduct and misconduct)</i>	10-12

Version Updates

	Version	Date
Date on which the DEMAT consulted with unions	3	12 April 2021
Date approved by the DEMAT Personnel Committee	3	18 November 2021
Effective date of policy being fully adopted by DEMAT	3	1 January 2022
Policy to be reviewed by DEMAT Personnel Committee	3	November 2022

For all questions in relation to this policy please contact the HR Team on: HRteam@demat.org.uk.

Scheme of Delegation

For all disciplinary cases and dismissals, the following delegation model shall apply: All disciplinary hearings or appeals require at least two members of the panel, to be determined by the role with delegated authority. If in doubt, please contact your HR advisor for advice.

Post	Authority to proceed	Hearing (lead)	Appeal (lead)
Central services senior leadership	CEO	Chair of Personnel or Remuneration	Chair of Audit & Risk
Headteacher	CEO	Chair of Personnel or Remuneration	Chair of Audit & Risk
School leadership positions (Deputy/Assistant Head)	Headteacher	DEMAT Headteacher (panel to include one member of LGB)	Member of Trust Executive
All other school posts	Headteacher	DEMAT Headteacher (panel to include one member of LGB)	Member of Trust Executive
All other Central services posts	Directorate lead	DEMAT Headteacher	Other DEMAT Headteacher

Definitions

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

Senior Manager refers to any senior manager within DEMAT. This may be either a director or senior manager from the central team or within a constituent academy, delegated to deal with a disciplinary matter under this policy.

Investigating Officer refers to a senior manager or an external person appointed by the Headteacher or the Trust.

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

Representative refers to a person chosen by the employee to accompany them, who shall be a trade union representative or a workplace colleague.

Appeal Panel may be convened to hear an appeal against an outcome decision regarding a formal flexible working request. The appeals panel will be convened in line with the Trust's Scheme of Delegation.

Working days within the context of this policy means Monday to Friday, excluding Bank Holidays and school closure periods.

Demotion may be offered as an alternative to dismissal. The employee will be offered a lower graded position on different terms and conditions (with reflective pay and benefits deductions), with continuity of service.

Re-engagement may be offered as an alternative to dismissal. The employee will be offered an alternative position within the Trust, which may be on different terms and conditions (e.g., an alternative level, at a new location, a new area of work or different hours), with continuity of service.

Associated Policies and Documents

- DfE Teacher Standards
- Keeping Children Safe in Education (KCSIE)
- Safeguarding & Child Protection Statement
- Code of Conduct for all Employees
- Bullying and Harassment Policy
- Grievance Procedure

DEMAT HR policies can be accessed via our website at: <https://demat.org.uk/policies>.

Introduction

Aim

To help and encourage all employees to achieve and maintain acceptable standards of conduct. The aim is to ensure consistent and fair treatment for all in the organisation.

Application of the policy

This procedure applies to all employees of DEMAT, based either in schools or within the central team. It does not apply to agency workers or contractors, or those DEMAT employees who are within their probationary period. Instances of misconduct or gross misconduct for employees within their probationary period should be dealt with under the Trust's Probationary Procedure.

This policy does not form part of any employee's contract of employment, and it may be amended at any time following consultation with recognised unions.

1) Informal Action

Managers should seek to resolve minor misconduct informally and as soon as it occurs. Senior Managers or Line Managers may do this by:

- Arranging a meeting with the employee to discuss the issue(s)
- Explain why their alleged conduct is not acceptable and discuss and agree what can be done to improve.

Whilst this type of meeting is informal, notes may be taken to document the outcome. In certain cases, whereby there is reasonable grounds for belief that the alleged misconduct occurred, a Management Advice Note may be issued by the Senior Manager or Line Manager. Generally, employees would not have a right to representation at an informal meeting; however, in some cases, this may be permitted.

For more serious matters, an investigation will be required, and subsequent formal action taken if applicable, as per the guidance in this policy.

Management Advice Notes

A Management Advice Note may be given to the employee by a Senior Manager or a Line Manager following incidences involving minor misconduct.

A Management Advice Note is a way to record that a Senior Manager or a Line Manager has held a conversation with an employee to reset a particular standard with them regarding their conduct.

A Management Advice Note will be retained on an employee's file for a period of 1 year, following the date of issue. The Management Advice Note is a supportive measure to outline the expected standards of conduct. It will state the reason as to why the note has been issued, as well as the improvements expected and any support that the employee will be offered to help them achieve the standards set.

There is no appeal against a Management Advice Note issued.

Should any recurrences of misconduct occur within the following 1 year from the point of the Management Advice Note issue, this may mean that a matter is dealt with through formal action.

2) Serious Matters, Incidents or Allegations

For more serious matters pertaining to instances of misconduct or gross misconduct (as listed in the Appendices of this policy), an investigation will be required to establish whether there is a case and if a disciplinary is appropriate.

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.

Suspension

It may be appropriate to suspend an employee, following a serious incident or allegation. Suspension is not a disciplinary sanction and there is no assumption of guilt at this point.

An employee who is suspended from work will continue to receive normal contractual pay and should not attend work or contact workplace colleagues, except when invited to do so by a Senior Manager.

Should an employee be suspended from work during a school holiday period, the Investigating Officer will keep in touch with the employee during this period.

Investigations

An investigation into the incident will take place as soon as possible, to confirm if there is a case to answer. An Investigations Officer will be appointed to carry out the investigation, which can include, but is not limited to:

- Holding investigation meetings with other staff members, pupils or anyone involved with or who witnessed the incident.
- Gathering witness statements from other staff members, pupils or anyone involved with or who witnessed the incident.
- Collating and reviewing training records, schedules, CCTV, or any other relevant evidence.

Employees will receive reasonable notice in order to attend an investigation meeting and will be invited to the meeting via written notification, which will outline the allegations and their right to representation. Notes will be taken at investigation meetings, and these will form the basis of evidence put forward at the disciplinary hearing and will be shared with the employee following the meeting.

Investigation meetings shall normally be held during those days and hours when the employee would be working, unless in the event that the employee is suspended from work, in which case they may be invited to attend an investigation meeting on their non-working days if part-time.

The outcome of an investigation will be either:

No action	The employee should be informed, where appropriate, if this is the case.
Informal action	For minor breaches. A Management Advice Note should be issued as described in the 'Informal Action' section of this policy.
Formal action	A disciplinary hearing is required.

3) Formal Action

If, following appropriate investigation by the Investigating Officer, they consider on the facts that formal action for misconduct is necessary, a disciplinary hearing will be arranged.

Employees will be given 5 working days' notice and will be provided with a written invitation to the hearing, as well as any accompanying documentation and the final investigation report, to be reviewed as part of the disciplinary hearing. Employees will also be advised within this letter about their right to be accompanied at the disciplinary hearing.

At the employee's request, an extra copy of this notice, together with any evidence collected as part of the investigation, should be provided for his/her Representative.

Where the employee is unable or unwilling to attend a disciplinary hearing for a valid reason, it will be rescheduled. The hearing is able to be rescheduled once, unless extenuating or exceptional circumstances exist, in which case adjustments or further arrangements may be made. If the employee is unable to attend the rescheduled hearing and extenuating circumstances do not apply, the hearing will be held in the employee's absence.

The employee must advise the Disciplinary Manager of the following, at least 3 working days in advance of the hearing:

- The name and designation of their Representative
- Provide any written documentation to be considered
- The names of any witnesses whom they wish to call
- Any special requirements (e.g., disability, language requirements).

The hearing will then take place with the employee, to allow them to respond to the allegation and the evidence provided.

In some instances, it may be that the Disciplinary Manager requires further investigation to be carried out following the hearing, or that an adjournment is required to consider the decision. If this is the case, the Disciplinary Manager will inform the employee and bring the hearing meeting to a close, providing written follow up of the decision to adjourn, or the need for further investigation. A subsequent hearing meeting should then be arranged to review any new evidence collected as part of further investigation, or to deliver the outcome to the employee.

In cases where a decision is reached within the hearing, the Disciplinary Manager will deliver the decision verbally at the conclusion of the hearing. An outcome letter will also be sent to the employee within 5 working days of the hearing.

Outcomes

The Disciplinary Manager will deliver the decision verbally at the conclusion of the hearing meeting. An outcome letter will also be sent to the employee as soon as possible and usually within 5 working days of the hearing. Please note that any warnings should be removed from the employee's file once expired (i.e., after the 12 month live period).

Possible outcomes from a disciplinary hearing are as follows:

Please refer to the Appendices for examples of misconduct or gross misconduct.

No action	No further action is considered		
Informal action	Where action is required but not formally. Management Advice Note to be issued.		
Formal action	Where action is required formally. The following sanctions will be considered:	First Written Warning	Misconduct: the employee may or may not have received a Management Advice Note previously. Warning is live for a period of 12 months. Should any recurrences of misconduct occur within the following 1 year from the point at which the First Written Warning is issued, this may result in a further disciplinary hearing, of which the outcome may be a Final Written warning.
		Final Written Warning	Misconduct: the employee already has a first written warning Or Gross Misconduct; a sanction short of dismissal subject to mitigation. Warning is live for a period 12 months. Should any recurrences of misconduct occur within the following 1 year from the point at which the Final Written Warning is issued, this may result in a further disciplinary hearing, of which the outcome may be dismissal.
		Dismissal (procedural)	Misconduct: the employee already has a final written warning. employee will be entitled to notice or pay in lieu. <i>Re-engagement or demotion may be offered as an alternative to dismissal in certain cases.</i>
		Summary dismissal	Gross misconduct: employee is not entitled to notice or pay in lieu. <i>Re-engagement or demotion may be offered as an alternative to dismissal in certain cases.</i>
		Demotion or transfer	Misconduct or Gross Misconduct; if the same incident would not occur in an alternative role.

4) Right of Appeal

The employee has a right of appeal against a decision to issue a warning or to dismiss, which should be submitted in writing within 10 days of the date on the outcome letter.

Appeals against formal written warnings or dismissal should be made in writing, and details of to whom appeals should be directed will be included in the disciplinary outcome letter.

The Appeal Panel will be convened in line with the Trust's Scheme of Delegation and, in normal circumstances, within 20 working days after receipt of the appeal. Employees will be invited to an appeal hearing via written notification.

There are two possible outcomes of the appeal process:

Uphold	The appeals manager agrees with the original findings and the initial decision taken will remain
Overturn	The appeals manager does not agree with a decision, and they overturn it with an appropriate alternative.

If the Appeal Panel overturns a decision to dismiss the employee (either summarily or procedural), the employee may be:

Reinstated	The employee will go back into the position they held at the time they were dismissed, on the same terms and conditions, with continuity of service.
Re-engaged	The employee will be offered an alternative position within the Trust, which may be on different terms and conditions (e.g., an alternative level, at a new location, a new area of work or different hours), with continuity of service.
Demoted	The employee will be offered a lower graded position on different terms and conditions (with reflective pay and benefits deductions), with continuity of service.

The outcome will be confirmed in writing within 5 working days of the hearing. The Panel's decision is final and there is no further right of appeal.

5) Trade Union Representatives

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, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.

6) Confidentiality

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.

7) Appendices

Levels of Misconduct

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. Gross misconduct may lead to dismissal, with or without notice.

The following are **examples** of matters that are normally regarded as gross misconduct. This list is intended as a guide and is not exhaustive:

- 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:
 - Sexual behaviour towards or relations with a pupil
 - Physically harming a pupil
 - Criminal offences related to or against a child
- 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
- Sexual misconduct, whether at work or not, and whether criminal or not
- Acts of physical or threatened violence, vandalism, bullying, verbal abuse or behaviour which provokes violence
- Possession, use, supply or attempted supply of illegal drugs or any other inappropriate substances, whether illegal or not
- Being under the influence of alcohol or other substances which make you unfit to perform your duties during working time, or illegal use of drugs at any time
- Deliberately accessing internet sites containing pornographic, offensive, or obscene material on our equipment or during working time
- Communicating offensive, obscene or unauthorised sexually explicit material whether verbally, written, in electronic communication, or by social media
- 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:
 - Failure to comply with the Prevent Duty
 - Failure to report safeguarding concerns

- Failure to exercise proper control or supervision of pupils
 - Disclosure of restricted public examination material or content
 - Falsifying sickness absence
 - Taking leave when permission denied
 - Ignoring handling instructions/responsibilities/safety regulations, to include those in relation to chemicals, machinery, equipment or food
- A serious breach of our Code of Conduct
 - A serious act of insubordination
 - Refusal to carry out reasonable instructions from a manager, or other deliberate and serious non-compliance
 - Serious breach of the Trust's Equality & Diversity policy, including but not limited to, harassment, discrimination, bullying or victimisation towards any other member of staff, visitor, pupil, parent, contractor, Governor, or any other person on the grounds of difference, on Trust premises or at a social or training event
 - Dishonesty associated with place of work or job being undertaken, for example:
 - Theft or unauthorised removal or misuse of property
 - 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
 - Demanding or accepting monies, gifts, or other considerations as a bribe for the use of our property or provision of our service
 - Failure to disclose criminal convictions, cautions, bind over 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))
 - Failure to disclose during the course of your employment, an arrest or summons for an offence, a conviction, a bind over order, a reprimand or a warning given by a police force
 - Undertaking unauthorised paid or unpaid employment during working hours, including during periods of sickness absence.
 - 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.
 - 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, Trustee, member of the public, or our reputation.

- Victimising a person who has raised concerns, made a complaint, given evidence or information under our policies, e.g., Grievance Policy, Disciplinary Policy or otherwise
- Making a disclosure of false or misleading information maliciously under our Whistleblowing Policy, for personal gain, or otherwise in bad faith against a person, or making untrue allegations in bad faith against a person
- Bringing the organisation into serious disrepute

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

Misconduct

Misconduct is a minor breach of Trust or School policy, rules, or standards. This list is intended as a guide and is not exhaustive.

- Inappropriate behaviour which is not in keeping with our Trust values and ways of working
- Absenteeism and lateness, for example:
 - Unauthorised absence or leaving your job during working hours, without permission or sufficient cause for absence
 - Frequent failure to attend work punctually
- Failure to comply with our sickness absence reporting procedure
- Neglect of duty
- Failure to adopt safe working practices/use protective equipment where required by law or management
- Damage to, or unauthorised use of, our property or contractor's property
- Insubordination
- Obscene language and/or other offensive behaviour
- Undertaking additional employment outside normal working hours without authorisation
- Breaches of our policies
- Breaches of your contract.