



Staff Disciplinary Policy and Procedure

June 2020

Office use

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Associated documents:			
<ul style="list-style-type: none"> Grievance Policy GDPR Policy 		<ul style="list-style-type: none"> Social Media Policy ICT Acceptable Use Policy 	
Links to:			
<ul style="list-style-type: none"> Bribery Act 2010 Employment Rights Act 1996 Keeping Children Safe in Education September 2018 		<ul style="list-style-type: none"> Working Together to Safeguard Children March 2018 Guidance for Safe Working Practice for the Protection of Children and Staff in Education Settings 	

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1 Introduction and purpose of the policy

Diverse Academies aims to ensure that in complying with both legal requirements, and acting as a reasonable employer, that a fair and equitable process will be adhered to in progressing disciplinary matters. Adopting this approach will:

- Allow disciplinary matters to be dealt with in a timely and appropriate manner
- Set standards of conduct at work.
- Ensure that members of staff are aware of the standards expected of them and accountable.
- Treat all members of staff on an equal basis.
- Maintain good staff relations.
- Reduce the likelihood of arbitrary decisions by managers.
- Assist the academies in the Trust to operate effectively.
- Apply appropriate disciplinary measures where needed.

2 Guideline to inappropriate behaviour

The issues listed below must be brought to the attention of any new staff member and all staff should be reminded of these issues. Staff should also take note of the Safeguarding policy, General Principles and Practices of Employment, Safe Working practices document and Staff Handbook. This will ensure that all staff are clear about boundaries and expectations of them.

Language - staff should refrain from using inappropriate, foul and abusive language. This type of language will lead to disciplinary action.

Avoid physical contact - even what is meant as a comforting gesture can be misconstrued.

Home email/telephone/mobile numbers – you should not give your home telephone, mobile number or personal email address to students.

Favouritism – it is important to be seen to treat all students consistently and with equity. Avoid circumstances where it might appear that you are giving anyone undue attention. This does not mean that you cannot give extra time to a student where the situation merits it.

Tutorials and other one-to-one contact tutorials should always be on Academy premises or, in the case of offsite learners, at a venue that has been pre-agreed and notified to the line manager. Apart from the fact that members of staff could be leaving themselves open to the possibility of false allegations, there are insurance issues to consider. Residential trips are an exception to this,

where they are concerned, you are advised to follow the same guidelines as those shown below for any one-to-one meetings.

- Make sure that a colleague knows when you are carrying out one-to-one sessions. A list of dates, times and names on the door of the room makes an obvious public statement.
- Where possible, carry out one-to-one sessions with the door open.
- If this is not appropriate, perhaps because the student is distressed, or the matter being discussed is confidential, it is especially important to make sure a colleague knows that the session is taking place and/or to put a notice on the door.
- Where you are having an 'emergency' tutorial with a student and it may not be possible to notify a colleague, put a notice on the door indicating that a tutorial is taking place.

3 Boundaries

Tutoring – good tutoring, like good counselling, is about listening to the learner and not talking about your own experiences. Personal disclosures are inappropriate and may wrongly be taken to imply intimacy. Tutors sometimes feel that sharing common experiences is helpful, but – “I know how you feel, when I was at school I had difficulty meeting deadlines” or “I understand what you are going through, I had a sick parent myself”, are inappropriate.

Best practice in counselling/tutoring is to aim for empathetic listening without such disclosures as they tend to move the focus from the learner to the tutor. At times it is appropriate to ask questions, but not of the kind which the learner might perceive as “prying”. Learners have a right to privacy.

There will be times when a student has personal problems which are significant and may prevent the learning experience from being valuable or even attainable by the student. When this type of situation occurs i.e. a serious problem for which the student actively seeks help, you should make your line manager and appropriate Academy contact aware.

4 You and the law / complaints

Staff members, governors and volunteers should not knowingly be party to students under the age of 18 drinking and/or purchasing alcohol. The consumption of alcohol by staff is not permitted whilst supervising students at social events such as proms etc.

The legal implications of any activity need to be taken into account. As a staff member, governor or volunteer you can be open to a variety of allegations/complaints. To avoid this, bear the advice in these guidelines in mind. For the same reason keep records of tutorials and other key meetings.

If you are concerned about any of the issues raised here, or want to discuss a particular situation, please contact your Principal/Business Leader or line manager.

5 Allegations of abuse against a staff member

Allegations against all staff members are taken seriously. They are dealt with quickly, fairly and consistently in a way that protects the student and at the same time supports the person who is the subject of the allegation. Every effort is made to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated. This applies to all members of staff, including volunteers, agency workers, consultants or self-employed contractors. Please see General Principles and Practices of Employment – Guidance Flow Chart Allegations of abuse against staff.

This policy relates to any persons who are currently working with the Trust regardless of whether the establishment is where the alleged abuse took place. If the allegation concerns a Volunteer who is no longer employed by the Trust, it will be referred to the police. Historical allegations of abuse will also be referred to the police.

Where an allegation is made against any person working in or on behalf of the Trust, in which they have:

- Behaved in a way that has harmed a child or may have harmed a child;
- Possibly committed a criminal offence against or related to a child; or
- Has behaved towards a child or children in a way that indicated they are unsuitable to work with children.

If an allegation is made by a student without reference to a specific procedure or process, then in the first instance it will be investigated by the Principal/Business Leader and the immediate line manager who manages the staff member. If any of the above are implicated in the complaint an alternative Investigating Officer will be appointed.

The member of staff against whom the complaint is made will be presented with full details of the complaint made and will be barred from any contact with the student while the investigation continues. The Investigating Officer will be responsible for deciding whether there is a complaint to answer. This may include attendance at a disciplinary hearing, if appropriate.

The establishment of an investigation team on this basis is designed to protect the interests of the staff member as well as the Trust's position and the student's rights. Therefore, all statutory obligations to a member of staff will be safeguarded and there will be no presumption of guilt or of an act of omission that might jeopardise the staff member or the Trust's position. The duty of care to the staff member will be a prime feature of the conduct of the investigation, as will the obligations the Trust as towards its students.

Whilst we acknowledge that such allegations (as all others) may be false, malicious or misplaced, we also acknowledge that they may be founded. It is, therefore, essential that all allegations are investigated properly and in line with agreed procedures. The following definitions will be used to determine the outcome of the alleged allegation:

- **Substantiated:** there is sufficient evidence to prove the allegation
- **Malicious:** there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive
- **False:** there is sufficient evidence to disprove the allegation
- **Unsubstantiated:** there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.
- **Unfounded:** there is no evidence or proper basis which supports the allegations being made.

6 Roles and responsibility for implementing the policy

The Trust has overall responsibility for the effective operation of this policy and for ensuring compliance with the relevant statutory framework. The Trust has delegated day-to-day responsibility for operating the policy and ensuring its maintenance and review to the Principal/Business Leader.

All allegations of alleged or suspected abuse against a person who works with children will be reported to the Local Authority Designated Officer (LADO).

The Principal/Business Leader, or where the Principal/ Business Leader is the subject of an allegation, the Chief Operations Officer or Senior Executive Lead (SEL), will immediately discuss the allegation with the designated officer(s), to consider the nature and context of the allegation and agree a course of action and will immediately notify and take advice from the Local Authority Designated Officer. The decision to suspend will be made by the COO and/or CEO. In cases of the CEO the Chair of the Board will make the decision to suspend.

The Principal / Business Leader, in consultation with the COO and/or SEL, will carefully consider if the circumstances of the case warrant a person being suspended from contact with students or whether alternative arrangements can be put in place pending the allegation or concern is resolved. The advice from the LADO will be sought in making this decision.

Initial Action

- The person who has received the allegation or witnesses an event will immediately inform their Academy Principal/Business Leader (or COO / SEL if the allegation is against the Principal/Business Leader) and make a record
- The Principal/Business Leader will take steps, where necessary, to secure the immediate safety of students and any urgent medical needs
- The member of staff will not be approached at this stage unless it is necessary to address any **immediate** safety of students
- The Principal/ Business Leader may need to clarify any information regarding the allegation, however, no person will be interviewed at this stage
- The Principal/ Business Leader will consult with the LADO in order to determine if it is appropriate for the allegation to be dealt with by the Trust or if there needs to be a referral to Social services and/or Police for investigation
- Consideration will be given throughout to the support and needs of students, parents and staff
- The Principal/ Business Leader will inform the CEO/COO/SEL of any allegation

7 Record keeping

Detailed records will be made to include decisions, action taken and the reasons for these. All records will be retained securely in line with GDPR. The Investigation Officer will complete the Preliminary Investigation Report. Please see General Principles and Practices of Employment - Preliminary Investigation Report – Allegations.

Any warnings issued will be kept as part of the staff file while the warning is live. Any relevant documentation used as part of the process will also be kept on file while the warning is live.

Documentation relating to a safeguarding incident where the allegations were substantiated will be kept for a period of 10 years.

8 Supporting those involved

Diverse Academies has a duty of care to its members of staff and will provide effective support for anyone facing an allegation. Individuals should be informed of concerns or allegations as soon as possible and given an explanation of the likely course of action, unless there is an objection by the children's social care services or the police. The investigating officer will appoint a named representative to keep the person who is the subject of the allegation informed of the progress of the case and consider what other support is appropriate for the individual i.e. contact their trade union representative, if they have one, or a colleague for support, access to welfare counselling or medical advice.

Any allegation of abuse made against a teacher or other member of staff or volunteer will be dealt with in a quick, fair and consistent way to minimise the stress inherent and provide effective protection for the child and at the same time support the person who is the subject of the allegation.

We recognise that staff working in the academy who have become involved with a student who has suffered harm or appears to be likely to suffer harm may find the situation stressful and upsetting.

We will support such staff by providing an opportunity to talk through their anxieties with the Designated Safeguarding Lead and to seek further support as appropriate.

9 Disciplinary Procedure

It is necessary for the proper operation of the Trust, the Health and Safety of students and members of staff that we operate a disciplinary procedure. Every member of staff has a role to play in both achieving and sustaining the highest standards of conduct. This procedure is designed to ensure a member of staff's conduct meets the standards required of them and to ensure that members of staff are treated fairly and consistently. One of its primary aims is to encourage and facilitate a permanent improvement in the member of staff's conduct.

We reserve the right to implement the procedure at any stage as set out below taking into account the alleged misconduct of a member of staff. This procedure should be read in conjunction with the investigation and suspension guidelines contained in the General Principles and Practices guidelines document if disciplinary action is to be taken.

Where time limits are referred to in the course of this procedure they may be varied by agreement between the member of staff and line managers.

The procedure recognises the importance of informal intervention aimed at improving/changing conduct. Wherever possible, problems should be resolved through an informal process, once facts have been established. In many situations' informal methods, e.g. line management meetings, coaching or counselling, may prove valuable in bringing about improvements in the member of staff's conduct before the formal disciplinary procedure is implemented. Such measures shall be documented, be signed and dated on the individual's staff file but are not to be treated as a formal stage of the disciplinary procedure.

Formal Disciplinary Action will therefore only take place when it is decided that:

- Further counselling or training will not bring about the improvement required.
- The alleged misconduct warrants formal disciplinary action owing to the serious nature of the allegation.
- There is a clear breach of conduct and standards expected of staff members working within the Trust.

10 Investigatory action

Disciplinary action will not be undertaken until an investigation has been carried out to establish the facts. As soon as the initial facts of the case have been established an Investigation Officer will be appointed to carry out the investigation. The Investigation Officer will be a member of staff who has had no prior involvement with the case.

Depending on the circumstances of the case, the member of staff may be invited to attend an investigatory meeting. If such a meeting is held prior to a disciplinary hearing, the member of staff will be informed at the outset that the meeting is an investigatory meeting. The Trust reserves the right to dispense with an investigatory interview and to proceed directly to a formal disciplinary hearing where the facts are undisputed.

A staff member will be given 24 hours' notice of an investigation meeting, unless the allegation is so serious that an initial statement is required immediately to establish the basis facts. The staff member may bring a work colleague, or trade union official if they are available to support them in the meeting. Notes will be taken in any investigation meeting.

In determining the disciplinary action to be taken, managers should be aware of the need to satisfy the test of what is reasonable and must ensure that each case is investigated thoroughly, and all the relevant facts are taken into account.

If managers are unsure of any aspect of implementing the disciplinary procedure they should contact a member of the HR Team for advice and guidance.

11 Suspension from work

There may be instances where suspension with pay is necessary while the investigation is carried out. Diverse Academies reserves the right to suspend a member of staff from work at any stage of the procedure. However, suspension does not in itself constitute disciplinary action nor is it a presumption of guilt. Suspension is separate to any disciplinary procedure and will only be imposed after careful consideration; it will be as brief as possible and will be reviewed to ensure that it is not unnecessarily prolonged.

Re-deployment should be considered as an alternative to suspension, wherever possible. A member of staff cannot be suspended without authorisation from either the CEO, COO or Senior Executive Lead.

Please see guidelines on investigation and suspension in the General Principles and Practices of Employment document.

If there is an allegation which is considered to affect the wellbeing of students, the Designated Safeguarding Lead and the Local Authority Designated Officer (LADO) will be informed. For further guidance please refer to Keeping Children Safe in Education (statutory guidance for schools and colleges)

Any decision to suspend will be confirmed in writing within five working days and such written confirmation will state that the suspension is precautionary, not disciplinary, in nature pending the outcome of the investigation and any subsequent disciplinary proceeding.

12 Rights of representation

Members of staff may be represented by either a member of a recognised Trade Union of which they are a member, or by a work based colleague, during formal investigation and disciplinary meetings and appeals. They should be given the opportunity to be represented at any meeting in which disciplinary action is contemplated.

The member of staff's representative has the right to address the hearing to put forward the staff member's case, sum up the case and ask questions. The representative cannot respond on the member of staff's behalf to any questions asked at the hearing. The representative may also confer with the member of staff during the hearing.

If a member of staff who is an accredited representative of a trade union recognised by Diverse Academies for collective bargaining purposes is suspected of having committed a disciplinary

offence, we will take no action under this procedure (with the exception of suspending the member of staff in a case of suspected or known gross misconduct) until we have had a chance to discuss the matter, with the prior agreement of the member of staff, with a full-time official of that trade union.

Legal representation is not acceptable on either side at any stage within this procedure.

13 Timescales

The date of receipt of an allegation or complaint will be recorded as part of the investigation process. This includes the date when an allegation or complaint becomes construed as a disciplinary matter following the initial fact gathering exercise.

The formal investigation will, wherever possible, be completed within 15 working days. Protected time for this will be at the discretion of the CEO, COO or Senior Executive Lead. However, in particularly complex situations or where circumstances determine an investigation will take longer, then the member of staff/representative/union colleague should be informed, and a revised timescale agreed.

Where at the request of the Police/LADO an investigation is halted the timescale will commence at the resumption of the investigation.

14 Formal disciplinary action

The procedure is designed to be a series of progressive warnings to members of staff and incorporates at each stage the opportunity to improve conduct. It is only invoked following informal intervention unless the alleged misconduct is of a serious nature and an informal approach would be inappropriate. The three stages are:

- First Written Warning
- Final Written Warning
- Dismissal
- Each stage is followed by the right of appeal.

It may be necessary in certain circumstances involving serious or gross misconduct, for the procedure to be adapted and to move immediately to a Final Written Warning or to consider Dismissal. In certain circumstances we may wish to consider supplementary action such as redeployment.

If the investigation suggests there is a case to answer, the member of staff will be sent:

- a summary of the allegations
- a copy of all documentation that was collated as part of the investigation (unless it is mutually agreed that a particular document should be excluded or there are exceptional circumstances warranting its non-disclosure), which should include the names of any witnesses that have provided a statement or will be called as part of the disciplinary hearing
- notification of the time and date of any disciplinary meeting
- notification of the right to be accompanied

Names of witnesses to be called on behalf of the member of staff, and any documentation to be referred to at the meeting, should wherever possible be supplied to management at least 5 working days prior to the date of the meeting.

Attempts to find a date and time for the disciplinary meeting which is convenient for all parties will be made. If the date for the meeting turns out to be inconvenient, then the member of staff or the member of staff's representative should notify the HR Team in writing immediately and a new meeting will be arranged.

It is important that the member of staff attends the disciplinary meeting. If a member of staff fails to attend a disciplinary meeting without reasonable excuse the disciplinary meeting may proceed in that member of staff's absence. The member of staff's fellow worker or trade union official may attend in such circumstances and will be allowed the opportunity to present the member of staff's case. The member of staff will also be allowed to make written submissions in such a situation.

Where the chosen companion is unavailable on the day scheduled for the meeting, it will be rescheduled, provided the member of staff proposes an alternative time within five working days of the scheduled date. The disciplinary hearing will not be rescheduled on more than 2 occasions.

In the event of a decision to dismiss relating to the harm or risk of harm to children or vulnerable adults the Trust has an obligation and reserves the right to refer the member of staff to the Disclosure and Barring Service and the Teachers Regulation Agency.

Please see General Principles and Practices of Employment.

15 Gross misconduct

Gross misconduct occurs where a member of staff acts in a way which is seen in the light of all the circumstances of the case so serious that it makes the member of staffs continued employment incompatible with the best interests of the organisation and its values.

The following standards are examples (but are not limited) to those that, if not achieved, may lead to summary dismissal, following investigation for a first breach:

- Violent Conduct, physical or verbal, towards a member of staff, students or any other stakeholder.
- Discrimination, in relation to protected characteristics and clearly undermines the dignity of the person and would be grounds for formal disciplinary action against the individual.
- Improper contact and sexual relationships with students.
- Failure to declare a pecuniary interest including employment with a competitor or potential competitor without prior written consent of the CEO, COO, Business Leader and Principal.
- Deliberate damage to or misuse of Trust property.
- Confidentiality: The Trust expects all members of staff to maintain confidentiality and to adhere to the requirements of the staff code of conduct.
- Honesty: Members of staff are expected to treat Trust, members of the public's and fellow colleague's property with honesty and respect. Behaviour including actual or attempted theft on Diverse Academies or associated premises, whether on or off duty, including unauthorised borrowing of any item of property provided by the Trust.
- Fraud: including deliberate falsification of records is unacceptable, including a qualification that is a stated requirement of the member of staff's employment or results in financial gain to the member of staff. Any person who dishonestly makes a false representation to make a gain for him/herself or another or dishonestly fails to disclose to another person, information which he/she is under a legal duty to disclose, or commits fraud by abuse of position, including any offence as defined in the Fraud Act 2006.
- Negligence: this is particularly serious where it results, or could result in, injury or malicious damage to persons or damage to property.
- Corruption: this includes failure to declare a pecuniary interest in contracts.
- Bribery: giving or receiving a financial, or other, advantage in connection with the improper performance of a position of trust, or a function that is expected to be performed impartially or in good faith. (Bribery Act 2010).
- Conduct Outside: criminal offences outside employment, where the offence is relevant to the nature of the employment, safeguarding or affects the ability of a member of staff to carry out their duties, is likely to bring the Trust into disrepute, or undermines trust and confidence which exists between employer and member of staff. Also, a failure to inform your manager if you are arrested. It is a requirement to declare all police interviews, but action will only be taken by management if relevant to employment).

General Data Protection Regulation 2018; disclosure of confidential information, for example:

- Personal, sensitive or confidential information relating to other members of staff, stakeholders (identifiable people). This applies to both automated personal data, manual data and genetic/biometric data.
- The Trust's financial affairs including costings, budgets, turnover or other financial information and confidential policy documents.
- Any business plans and contract arrangements.
- A breach of the six principles of GDPR (see DALP GDPR policy).
- Being unfit for duty due to the influence of alcohol and/or non-prescribed drugs/illegal drugs. If any member of staff reporting for duty smells of alcohol or shows signs of substance abuse (in the reasonable view of the individual's manager), suspension from duty will be considered.
- Breach of procedures and standing orders brought to the attention of member of staffs e.g. by notice of training, and which could lead to injury to persons, damage to property or damage to public confidence in the services the Trust provides. This also includes any serious breach of any other policies e.g. Safeguarding, Health and Safety policies, especially where this may lead to serious injury to self, other persons or damage to property.
- Making or initiating public statements likely to lead to a lowering of public confidence in the Trust, including seeking to use the media to raise issues which should properly be handled internally. Nothing in this statement is intended to restrict members of staff from raising legitimate concerns in the public interests although these must be raised in the first instance with the Principal/ Business Leader who will provide advice via the Whistleblowing Policy.
- Social Networking: Inappropriate postings on social networking sites and especially where this leads to a lowering of public confidence in the Trust.

Breaches of the Acceptable use of Computer and Internet Policy, for example:

- Excessive use of the Internet / E-mail for personal reasons where it impacts on an individual's day to day work and continues to do so after formal warnings.
- Inappropriate use of E-mail or the Internet – e.g. for harassment or pornography.
- Obtaining and using an inappropriate level of password access (e.g. by "hacking" into a computer).
- Using unauthorised applications software.
- Refusal of a reasonable request.

Summary dismissal; if a member of staff is summarily dismissed on grounds of gross misconduct they will not be entitled to payment for notice.

16 Police enquiries/safeguarding process including LADO referrals

If a member of staff is arrested, charged or summoned for questioning in relation to any alleged offence, they must inform their line manager in writing as soon as reasonably possible. This includes members of staff whose job involves driving, who must inform their manager in writing if charged with a driving offence. Failure to do so will be considered as gross misconduct and appropriate disciplinary action may be taken. Any action taken after notification will be dependent upon the relationship of the alleged offence to the duties undertaken. Advice can be obtained from the HR Team.

If a member of staff is subject to an investigation by the police for alleged offences, which are relevant to the nature of the member of staff's employment, the Trust will be entitled to commence its own parallel enquiries but these will not hinder the police enquiry.

Investigation and disciplinary action under this procedure will not necessarily wait or be dependent upon the outcome of police enquiries or legal proceedings. Where, at the request of the police, an investigation is halted the timescale will commence at the resumption of the investigation.

Disciplinary action may be taken if the alleged conduct has, on the balance of probabilities, occurred and is; relevant to the nature of the member of staff's employment, affects their ability to carry out their duties, is likely to bring the Trust into disrepute or leads to a complete breakdown of trust and confidence between employer and employee.

17 Prohibition order

The Trust must decide whether an allegation of teacher misconduct is sufficiently serious to be referred to the Teaching Regulation Agency (TRA).

If a teacher or instructor (a person engaged to carry out teaching work as defined by The Teachers' Disciplinary (England) Regulations 2012) has been dismissed for a serious misconduct, or would have been dismissed for that reason if they had not resigned, the Trust must consider whether to refer the case to the TRA. TRA will undertake an initial assessment to determine whether a case is serious enough to potentially result in a prohibition order.

18 Confidentiality

The Trust will make every effort to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered. The Education Act 2002 introduced reporting restrictions preventing the publication of any material that may lead to the identification of a teacher who has been accused by, or on behalf of, a student from the same academy (where that identification would identify the teacher as the subject of the allegation). The reporting restrictions apply until the point that the accused person is charged with an offence, or until the Secretary of State or the General Teaching Council for Wales publishes information about an investigation or decision in a disciplinary case arising from the allegation.

19 Review of the policy

This policy is reviewed annually by the Trust who will monitor the application and outcomes of this policy to ensure it is working effectively.