

St Joseph's Catholic Primary School, Bishop's Stortford CM23 2NL
DISCIPLINARY POLICY AND PROCEDURE

Personnel Committee
Statutory
Reviewed: February 2018
Next review: Spring 2019

DEFINITIONS

In this Disciplinary Policy and Procedure, unless the context otherwise requires, the following expressions shall have the following meanings:

- i. 'Chair' means the Chair of the Governing Body appointed from time to time.
- ii. 'Clerk' means the Clerk to the Governing Body appointed from time to time.
- iii. 'Companion' means a willing work colleague not involved in the subject matter of the disciplinary proceedings against an employee under this Disciplinary Policy and Procedure, or an accredited trade union representative or an official employed by a trade union who will be expected to make themselves available for periods of time necessary to meet timescales under this Disciplinary Policy and Procedure.
- iv. 'Diocesan Schools Commission' means the education service provided by the diocese, which may also be known, or referred to, as the Diocesan Education Service.
- v. 'Governing Body' means the governing body of the School.
- vi. 'Governors' means the governors appointed or elected to the Governing Body of the School, from time to time.
- vii. 'School' means the school or college named at the beginning of this Disciplinary Policy and Procedure and includes all sites upon which the school undertaking is, from time to time, being carried out.
- viii. 'Vice-Chair' means the Vice-Chair of the Governing Body elected from time to time.
- ix. Misconduct means any action or inaction which contravenes the provisions of the employee's contract of employment, the rules laid down by the Governing Body and/or any Professional Code of Conduct and Practice. In such cases the Disciplinary Policy and Procedure will apply and the Capability Policy and Procedure may also apply

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1. SCOPE OF PROCEDURE

- 1.1 This Disciplinary Policy and Procedure applies to you if you are an employee or worker at the School (hereinafter referred to as an “employee” or “you”).
- 1.2 The purpose of this procedure is to provide a structure to address any issues or concerns that the Governing Body/School may have relating to an employee’s conduct.
- 1.3 The Governors delegate their authority in the manner set out in this procedure.
- 1.4 There may be some occasions where an employee’s lack of capability could also be described as lack of competence. This Disciplinary Policy and Procedure and the School’s Capability Policy and Procedure may be used concurrently whilst the School endeavours to ascertain if the lack of capability is Misconduct or lack of competence.
- 1.5 There may be occasions where an employee’s conduct could relate to their health. This Disciplinary Policy and Procedure may be used concurrently with the School’s Sickness Absence Policy and Procedure. In particular, if an employee is absent from School on sick leave following this Disciplinary Policy and Procedure being invoked, the School may use its Sickness Absence Policy and Procedure.
- 1.6 Subject to Paragraph 1.2(a) and (b) of the School’s Grievance Resolution Policy and Procedure, there may be occasions when an employee attempts to use the School’s Grievance Resolution Policy and Procedure in connection with actions taken under this Disciplinary Policy and Procedure. This shall not lead to any automatic delay or pause in the conduct of any matters under this Disciplinary Policy and Procedure.
- 1.7 There may be occasions, for example in relation to child protection allegations, where this procedure needs to be modified to comply with the requirements of the School’s Child Protection and Safeguarding Policies, for example, by allowing the Local Authority Designated Officer to offer advice to Governors at appropriate stages.
- 1.8 In this policy “working day” means any day on which you would ordinarily work if you were a full time employee. In other words it will be different for teaching and non-teaching staff but will not be different on the basis of whether an employee is full-time or part-time.
- 1.9 The School is committed to ensuring respect, objectivity, belief in the dignity of the individual, consistency of treatment and fairness in the operation of this Policy.
- 1.10 The Appraisal Policy does not form part of any other procedure but relevant information from the appraisal process, including the Appraisal Report, may be taken into account in this Disciplinary Policy and Procedure and/or the School’s Capability Policy and Procedure.

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- 1.11 The management of unsatisfactory performance and related investigations will be treated in confidence as far as possible by all parties involved at all stages of this Disciplinary Policy and Procedure.
- 1.12 The School will maintain records of all interviews and reviews which take place under this Disciplinary Policy and Procedure. All data and evidence collected is to be shared between all the relevant parties, where appropriate.

2. INFORMAL ACTION

- 2.1 Your line manager may give you informal warnings at any time about any conduct or performance falling short of the standard expected.
- 2.2 Informal warnings may be recorded in writing and referred to at a later stage to evidence that an informal approach was attempted and the success or failure of such an approach. Informal warnings will not normally be kept on record for longer than 12 months.
- 2.3 Failure to comply with informal action should not, on its own, be used as justification for issuing a higher form of sanction than would otherwise have been imposed under the formal process.

3. SUSPENSION

- 3.1 In cases where the Investigating Manager considers that it is appropriate the Headteacher or the Chair may suspend you for a period of up to ten working days.
- 3.2 The Headteacher must inform the Chair of the suspension or, in the event of suspension by the Chair, the Chair must inform the Governing Body (excluding staff Governors).
- 3.3 This period of suspension may be extended subject to review by the Chair every 10 working days. The reason(s) for extending the suspension will be confirmed in writing.
- 3.4 Only the Governing Body may end the suspension.
- 3.5 Notification of suspension should ideally be undertaken in person but may, where circumstances dictate, be notified to the employee in writing. If notification of suspension is undertaken in person it will be confirmed in writing.
- 3.6 ACAS suggests that suspension may, whilst investigations are carried out, be appropriate where:
 - (a) Relationships have broken down
 - (b) Gross misconduct is alleged

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- (c) There are reasonable concerns that evidence or witnesses could be interfered with
 - (d) There are responsibilities to other parties
 - (e) It is necessary for the protection of pupils, staff or property
 - (f) The presence at work of the employee under investigation may be an obstacle to a proper investigation.
- 3.7 Suspension is a neutral act and is not a disciplinary sanction. You will receive full pay and benefits during a period of suspension (unless you are otherwise absent from work due to sickness or other leave and have exhausted the pay entitlements connected to such absence).
- 3.8 During a period of suspension the School may require that you do not:
- 3.8.1 attend School at any time (except with the prior agreement of the Headteacher or Chair);
 - 3.8.2 communicate in any way with parents, pupils or governors except:
 - (a) with the prior written agreement of the Headteacher/Chair; or
 - (b) where following the investigation you are called to a formal disciplinary meeting, when you may then approach parents, pupils or governors as potential witnesses but this must be done via the Investigating Manager to avoid any breach of the Data Protection Act or duties of confidentiality.
 - 3.8.3 discuss the fact of your suspension or the fact, or nature, of the allegations against you with any member of staff except:
 - (a) with the prior written agreement of the Headteacher/Chair;
 - (b) for communication with your Companion who is a Trade Union representative;
 - (c) where you are called to an interview with the Investigating Manager or a Disciplinary Meeting, when you approach a Companion who is a colleague; or
 - (d) where you are called to a formal Disciplinary Meeting you may approach work colleagues as potential witnesses in support of your case.
- 3.9 During a period of suspension the School may suspend your access to your email account and to the Managed Learning Environment (MLE)/Virtual Learning Environment (VLE).
- 3.10 During a period of suspension the School may take such steps as necessary to cover your lessons or other commitments.
- 3.11 During any period of suspension your contractual duties to the School and to the Governing Body (whether express or implied) remain in force and enforceable.

4. INVESTIGATING, DISCIPLINARY AND APPEAL MANAGERS

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4.1 The table below sets out the persons to be appointed throughout the stages of the disciplinary procedure depending on the person who is the subject of the disciplinary proceedings:

<i>Employee Level</i>	<i>Investigating Manager</i>	<i>Disciplinary Manager</i>	<i>Appeal Manager</i>
Headteacher	Chair or a non-staff Governor (other than the Vice-Chair) nominated by the Chair	Governors' Disciplinary Panel appointed by the Vice-Chair	Governors' Appeal Panel appointed by the Vice-Chair
Other Leadership Spine and School Business Manager	Headteacher	Chair or a non-staff Governor (other than the Vice-Chair) nominated by the Chair	Governors' Appeal Panel appointed by the Vice-Chair
Other Teaching Staff	(1) A member of Leadership Team (other than Headteacher) appointed by the Headteacher, or in the event that (1) above cannot be complied with, (2) A person appointed by the Headteacher	Headteacher	Governors' Appeal Panel appointed by the Chair
Other Support Staff	A person appointed by the Headteacher	Headteacher	Governors' Appeal Panel appointed by the Chair

4.2 In cases relating to any alleged gross misconduct that would bring the School into disrepute, particularly in relation to its religious character, the Chair may act as

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Investigating Manager regardless of the level of the employee involved and the Disciplinary Manager may be the Governors' Disciplinary Panel.

5. FORMAL PROCESS

5.1 Step 1 - Investigation

5.1.1 The Investigating Manager will conduct an investigation into the alleged misconduct.

5.1.2 The Investigating Manager may appoint any other person from within the School or an external third party to assist in the investigation.

5.1.3 The Investigation Manager will notify you in writing of the fact of the investigation and the allegations made. The investigation may include a face to face interview with you but this is not mandatory. In the event of a face-to-face interview you will be notified at least 5 working days beforehand. You may, if you wish, provide a written statement or response to the Investigating Manager.

5.1.4 You are required to co-operate fully with the Investigating Manager to ensure that the investigation can be completed as swiftly and thoroughly as possible and, in any event, within a reasonable timeframe.

5.1.5 At the conclusion of the investigation, the Investigating Manager will produce an Investigation Report setting out, in detail, the allegations made in respect of your conduct, the evidence considered and a recommendation that either:

- (a) A Disciplinary Manager be appointed and a Disciplinary Meeting be convened in accordance with Step 2 below; or
- (b) There is insufficient evidence to support the allegations of misconduct to proceed in accordance with Step 2 below and no further action will be taken under this Disciplinary Policy and Procedure.

5.1.6 You will be sent a copy of the Investigation Report.

5.2 Step 2 – Disciplinary Meeting

5.2.1 If the Investigation Report contains a recommendation that you must attend a formal disciplinary meeting (“the Disciplinary Meeting”) with the Disciplinary Manager appointed, the Investigating Manager will write to you within 5 working days of receiving the Investigation Report, inviting you to the Disciplinary Meeting.

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5.2.2 The Disciplinary Meeting shall take place at least 5 working days after the Investigation Report was sent to you in accordance with Paragraph 5.1.6.

5.2.3 In advance of, and at the Disciplinary Meeting, the Disciplinary Manager shall consider:

- (a) Evidence presented in support of the allegations of misconduct against you;
- (b) Evidence presented in defence of the allegations of misconduct against you;
and
- (c) Where misconduct is admitted, whether in whole or in part, any evidence you have in mitigation.

5.2.4 The Disciplinary Manager may adjourn the Disciplinary Meeting to allow for further investigations in the light of your evidence and will reconvene the Disciplinary Meeting to give you an opportunity to comment on any further evidence produced by further investigations.

5.2.5 The Disciplinary Manager is not required to hear oral evidence and may rely on written evidence.

5.2.6 If the Disciplinary Manager does decide to hear oral evidence, you will be given an opportunity to comment on it either by (a) attending the meeting or (b) reviewing the notes of that oral evidence after the meeting (if you were not present at the meeting when such oral evidence was given). In the event of (b) you must provide any response to the notes of the oral evidence within 5 working days of receipt of the same.

5.2.7 Once all the evidence has been considered, the Disciplinary Manager will confirm the outcome of the Disciplinary Meeting in writing to you within 5 working days of the date of the Disciplinary Meeting ("the Disciplinary Decision Letter") being either:

- (a) the imposition of a formal disciplinary sanction in accordance with Paragraph 6; or
- (b) that, on balance, there is insufficient evidence to substantiate the allegations made against you and so the disciplinary proceedings will be terminated and no further action will be taken under this Disciplinary Policy and Procedure.

5.3 Step 3 – Appeal

5.3.1 In the event that you are unsatisfied with the decision of the Disciplinary Manager as set out in the Disciplinary Decision Letter, you can appeal to the Appeal Manager

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provided that you do so in writing to the Clerk within 10 working days of the Disciplinary Decision Letter being sent to you.

- 5.3.2 Your appeal letter must set out the grounds of your appeal in detail. This will enable the Clerk and the Appeal Manager to determine if the appeal is to be by way of a rehearing of the case or by way of a review of the case.
- 5.3.3 The Appeal Meeting will normally be held within 20 working days of your appeal letter being received by the Clerk.
- 5.3.4 The Appeal Manager may consider any new evidence produced by you which was not available to the Disciplinary Manager.
- 5.3.5 The Appeal Manager may only consider new evidence produced by the Disciplinary Manager if it touches upon your credibility in relation to evidence you have already given or if it rebuts any new evidence produced, or any assertions made, by you in your grounds of appeal.
- 5.3.6 In the event that the Appeal Manager considers that any new evidence from whatever source would warrant a more severe sanction the Appeal Manager shall refer the matter to the original Disciplinary Manager for reconsideration. The Disciplinary Manager may then impose a more severe sanction. In such a case, you are entitled to appeal against such increased sanction in accordance with this Paragraph 5.3.
- 5.3.7 The Appeal Manager is not required to hear oral evidence and may rely on written evidence.
- 5.3.8 If the Appeal Manager does decide to hear oral evidence, you will be given an opportunity to comment on it either by (a) attending the meeting or (b) reviewing the notes of that oral evidence after the meeting (if you were not present at the meeting where such oral evidence was given). In the event of (b) you must provide any response to the notes of the oral evidence within 5 working days of receipt of the same.
- 5.3.9 The Appeal Manager will confirm the outcome of the Appeal Meeting in writing to you within 5 working days of the date of the Appeal Meeting. The decision of the Appeal Manager is final and there will be no further right of appeal. The outcomes of the Appeal Meeting are:
- (a) the Appeal Manager may uphold the decision of the Disciplinary Manager; or
 - (b) the Appeal Manager may uphold your appeal and overturn the decision of the Disciplinary Manager.
 - (c) the Appeal Manager may impose a lesser sanction.

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6. FORMAL SANCTIONS

The Disciplinary Manager may impose the following sanctions:

6.1 A First Written Warning

6.1.1 A First Written Warning will remain live for **12** months from the date that the Disciplinary Manager's written decision was sent to you.

6.1.2 For a first disciplinary offence (ignoring any informal action), a First Written Warning would be the normal response.

6.2 A Final Written Warning

6.2.1 A Final Written Warning will remain live for **24** months from the date that the Disciplinary Manager's written decision was sent to you.

6.2.2 A Final Written Warning would normally be given for a second disciplinary offence committed or discovered during the currency of a live First Written Warning (even if that First Written Warning related to a different type of misconduct, if appropriate in the circumstances).

6.2.3 A Final Written Warning could be given for serious misconduct regardless of previous disciplinary history if the conduct is sufficiently serious.

6.3 Dismissal on notice

6.3.1 Dismissal on contractual notice would be given for a disciplinary offence (other than an act of gross misconduct) committed or discovered during the currency of a live Final Written Warning (even if the Final Written Warning related to a different type of misconduct, if appropriate in the circumstances).

6.3.2 For the avoidance of doubt the notice period commences immediately and does not await the outcome of any appeal.

6.3.3 In the event that your employment is terminated in accordance with this Paragraph 6.3:

- (a) If your contract of employment contains a garden leave clause the Governing Body may exercise that clause so that you are not required to attend the School during the notice period but remain employed and so bound by the terms of your contract of employment until the expiry of the notice period; or

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- (b) If your contract of employment contains a payment in lieu of notice clause the Governing Body may exercise that clause to bring your contract to an end with immediate effect.

6.4 Dismissal without notice or termination payment

6.4.1 Dismissal without notice or termination payment (also known as Summary Dismissal) will only occur if you have committed an act of gross misconduct or otherwise have destroyed the trust and confidence required between an employee and their employer, in this case between you and the Governing Body.

6.4.2 For the avoidance of doubt your dismissal takes effect immediately and does not await the outcome of any appeal.

6.4.3 The following is a **non-exhaustive** list of matters which the School considers may amount to gross misconduct:

- (a) Conduct incompatible with, or prejudicial to, the religious character of the School or the precepts or tenets of the Catholic
- (b) Conduct that is likely to bring the School or the Church into disrepute
- (c) Conduct giving rise to any Child Protection issue including, but not limited to, a change in your DBS status during the course of your employment
- (d) Failure to disclose your DBS status/submit to a DBS check where requested to do so by the Headteacher and/or the Governing Body
- (e) A serious breach of any relevant code of conduct or professional standards
- (f) Theft of any property
- (g) Malicious or wilful damage to any property
- (h) Knowingly or recklessly falsifying, or knowingly or recklessly causing falsification of, any documents whether for personal gain or not
- (i) Ordering any goods or services on behalf of the School from a supplier in which you or a relative have a personal interest (whether financial or not) without declaring that interest and without the permission of the Governors' Finance Committee
- (j) Dishonesty
- (k) Violence to any person
- (l) Unlawfully restraining a pupil
- (m) Abusive, threatening or offensive language or behaviour to any person
- (n) Unlawful discrimination or harassment
- (o) Bullying
- (p) Deliberate refusal to carry out a lawful and safe instruction
- (q) Absence from work without leave or reasonable explanation
- (r) Disclosing the contents of any live examination paper or assessment in advance to any pupil or parent
- (s) Concealing any actual or attempted cheating by any pupil or colleague
- (t) Attending work or undertaking duties whilst under the influence of alcohol or unlawful drugs

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- (u) Misuse of the School's ICT (including internet and email access and any social networking policy) to view or distribute obscene, pornographic, defamatory or otherwise unacceptable material
- (v) Supplying your personal contact details to a pupil without express authorisation from the Headteacher
- (w) Interacting with a pupil online out of school hours other than through the Managed Learning Environment
- (x) Making any sexual or romantic contact with any pupil whatever the age of the pupil
- (y) Breaching the confidentiality or data protection obligations surrounding the School, a parent, pupil, colleague or Governor
- (z) Covert recording of any meetings without the knowledge or consent of all persons present
- (aa) Serious breach of health and safety procedures
- (bb) Serious negligence (whether or not leading to any actual loss)
- (cc) Criminal activity during the course of employment
- (dd) Making a false malicious or vexatious allegation against the School, a parent, pupil, colleague or Governor

6.5 In all cases where the formal sanction involves dismissal, the Disciplinary Manager will recommend to the Governing Body that your employment is terminated in accordance with your contract of employment (where appropriate) and the Governing Body will take steps to terminate your employment.

6.6 Voluntary demotion as an alternative to higher formal sanction

6.6.1 There may be a situation where the Disciplinary Manager considers that a recent promotion or job change has been a contributory factor in your misconduct.

6.6.2 Where paragraph 6.6.1 applies, the Disciplinary Manager may offer you the option of taking a voluntary demotion as an alternative to a higher formal sanction. Any such offer shall be made in writing.

7. GOVERNORS' PANELS

7.1 Governors' Disciplinary and Appeal Panels shall comprise three non-staff Governors not previously involved in the matter and shall not comprise the Chair or Vice-Chair unless there are insufficient numbers of non-staff Governors not previously involved in the matter, in which case the Chair and/or Vice-Chair may be appointed to a Governors' Disciplinary or Appeal Panel.

7.2 In the event that there are insufficient numbers of Governors available to participate in a Governors' Disciplinary or Appeal Panel, the Governing Body may appoint associate members to solely participate in the appropriate Panel on the recommendation of the Diocesan Schools Commission.

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8. COMPANION

- 8.1 If you are the subject of disciplinary allegations leading to a meeting with the Investigation Manager, the Disciplinary Manager or the Appeal Manager, you may be accompanied at such interview or meeting by a Companion.
- 8.2 You must let the relevant Manager know who your Companion will be at least one working day before the relevant interview or meeting.
- 8.3 If you have any particular reasonable need, for example, because you have a disability, you can also be accompanied by a suitable helper.
- 8.4 Your Companion can address the relevant interview or meeting in order to:
- (a) put your case;
 - (b) sum up your case;
 - (c) respond on your behalf to any view expressed at the relevant interview or meeting; and
 - (d) Ask questions on your behalf.
- 8.5 Your Companion can also confer with you during the relevant interview or meeting.
- 8.6 Your Companion has no right to:
- (a) answer questions on your behalf;
 - (b) address the relevant interview or meeting if you do not wish it; or
 - (c) prevent you from explaining your case.
- 8.7 Where you have identified your Companion and they have confirmed in writing to the relevant Manager that they cannot attend the date or time set for the relevant interview or meeting, the relevant Manager will postpone the relevant interview or meeting for no more than five working days from the date set by the School to a date or time agreed with your Companion provided that it is reasonable in all the circumstances. Should your Companion subsequently be unable to attend the rearranged date, the meeting may be held in their absence or written representations will be accepted

9. TIMING OF INTERVIEW MEETINGS

Interviews or meetings under this procedure may:

- 9.1 need to be held when you were timetabled to teach;
- 9.2 exceptionally be held during planning, preparation and administration time if this does not impact on lesson preparation;
- 9.3 be held after the end of the School day;
- 9.4 Not be held on days on which you would not ordinarily work;
- 9.5 Be extended by agreement between the parties if the time limits cannot be met for any justifiable reason.

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10. VENUE FOR INTERVIEWS OR MEETINGS

If the allegations are sensitive the relevant Manager may hold the interview or meeting off the School site.

11. ASSISTANCE

11.1 In any case concerning the religious character of the School, the Diocesan Schools Commission must be notified immediately the School becomes aware of the allegations and it may be represented at any relevant interview or meeting to advise the Investigating Manager, Disciplinary Manager or Appeal Manager.

11.2 In all cases involving any disciplinary sanction in relation to the Headteacher or to a person on the Leadership Spine, or to potential or actual dismissal of any other member of staff, the Diocesan Schools Commission and/or the Local Authority may send a representative to advise the Disciplinary Manager or Appeal Manager.

12. TRADE UNION OFFICERS

The School notes and adopts the ACAS Code of Practice's statement "Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement."

13. REFERRALS

13.1 Where a teacher is dismissed for serious misconduct (or may have been dismissed for serious misconduct if the teacher had not resigned) the School must consider whether to refer the circumstances to the National College for Teaching & Leadership under section 141D of the Education Act 2002 which came into force on 1 April 2012.

13.2 Where a person working within the School (whether a teacher or not) is dismissed or would have been dismissed if they had not resigned because that person committed conduct:

- (a) which endangered a child or was likely to endanger a child
- (b) which, if repeated against or in relation to a child, would endanger that child or would be likely to endanger him
- (c) involving sexual material relating to children (including possession of such material)
- (d) involving sexually explicit images depicting violence against human beings (including possession of such images)
- (e) of a sexual nature involving a child

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the School must refer that person to the Disclosure & Barring Service ("DBS") under section 35 of the Safeguarding Vulnerable Groups Act 2006.

REVIEW OF THIS PROCEDURE

This procedure produced by the Catholic Education Service (CES) for use in Catholic Voluntary Aided Schools in England, was amended in September 2013 and updated in June 2016 following consultation with the national trade unions. It may be adapted, as appropriate, for use in joint Church schools subject to the approval of the CES on referral by the relevant Catholic diocese. This procedure will be reviewed by the CES in readiness for academic year 2018/2019.