



STAFF CONDUCT AND DISCIPLINARY POLICY FOR RUSH COMMON SCHOOL

INTRODUCTION

1. In this policy as in all documents of Rush Common Academy Trust (“RCAT”) any reference to Governors of Rush Common School or Trustees of Rush Common Academy Trust is a reference to The Board of Directors of Rush Common Academy Trust and any reference to the Headteacher of Rush Common School is a reference to the Chief Executive Officer of RCAT.

2. This policy applies to all teaching and support staff employed by RCAT, irrespective of the terms and conditions they are employed on.

3. This Policy sets out the procedures that RCAT will follow when handling disciplinary matters, with the aim of ensuring the facts of the problem are established quickly and issues dealt with fairly and consistently. RCAT recognises that it is essential for discipline to be maintained in order to ensure the well-being and safety of employees and the smooth running of schools. Disciplinary rules and procedures are necessary to promote fairness in the treatment of individuals and order in the conduct of industrial relations. The disciplinary procedure set out in this policy (“the procedure”) is designed to ensure that, when it is necessary to use the disciplinary procedure the employee is given every opportunity to improve.

4. Effective support, supervision and counselling of employees should reduce the need to use the disciplinary procedure. Where appropriate, shortcomings should be brought to the employee’s attention as soon as possible in an effort to resolve the situation informally, before this procedure is set in motion.

5. The formal procedure should only be used as a last resort rather than the first option. It should not be embarked upon until the Headteacher is satisfied that normal routine supervision, advice, training, support and counselling (where appropriate) have been given. Guidance on informal interviewing is set out in Annex 1.

APPOINTMENT OF A STAFF DISCIPLINARY COMMITTEE AND STAFF DISCIPLINARY APPEALS COMMITTEE

6. The Board of Directors will appoint a sub-committee of at least two directors (“the staff disciplinary committee”) to deal with any disciplinary matter which has not been resolved by the Headteacher, not delegated to the Headteacher or concerns the Headteacher and it will appoint a further staff disciplinary appeal committee (“staff disciplinary appeal committee”) consisting of at least 3 Directors (but excluding the Headteacher) none of whom were involved in the case in any way before the appeal hearing to deal with any appeal against the decision of the staff disciplinary committee.

RIGHT OF APPEAL

7. There is no further right of appeal beyond the staff disciplinary appeal committee and its decision is final.

Rights of the Employee

8. At all stages of the procedure the employee has the right to be accompanied by a trade union representative, or a friend who will normally be a work colleague.

9. The employee has the right to be given, in advance, details of all the matters to be discussed, to see any written evidence and to receive a copy of this procedure.

10. If disciplinary penalties are imposed, the employee has a right of appeal against them in accordance with this procedure.

11. Except where an employee is told that the warning is final and that any further disciplinary action may lead to dismissal, breaches of discipline will be disregarded for the purposes of this procedure after satisfactory completion of the review period.

12. Employees are required to co-operate with investigations and proceedings under this procedure.

Use of the Disciplinary Procedure

Issues of Professional Capability

13. Issues of capability and efficiency will be dealt with under the Professional Capability Procedure.

14. Misconduct covers any failure to comply with accepted standards of work or behaviour, such as:

- unauthorised absence
- persistently poor timekeeping
- refusal or failure to obey lawful and proper instructions
- breach of health and safety requirements
- harassment and offences against human dignity or equality, e.g. sexual, racial, religious harassment or extremism
- inappropriate behaviour towards children, young people or other service users

This is not an exhaustive list and in some circumstances these examples could be serious enough to be regarded as gross misconduct. Matters of misconduct are delegated by RCAT to the Headteacher.

15. Gross misconduct is misconduct serious enough to destroy the employment contract and make any further working relationship and trust impossible.

Examples include:

- actions, omissions or negligence which endanger others
- theft in the course of employment
- abuse of children, young persons or vulnerable adults
- fraud or deliberate falsification of claims and/or records

16. As the consequence of gross misconduct is normally summary dismissal, i.e. dismissal without notice or pay in lieu of notice all allegations of gross misconduct will be considered by the staff disciplinary committee. If summary dismissal is the outcome, all papers relating to the case will be sent to the Department for Education (who may refer it to the Teaching Agency) or the Teaching Agency, as appropriate.

Acts Against Children, Young People or Vulnerable Adults

17. Where there is an allegation which involves physical or sexual abuse of children, young people or vulnerable adults the appropriate protection procedures will be considered first and action taken accordingly.

18. Where there is no doubt following a DBS disclosure that an employee has, at any time, been convicted of an offence against children, young people or vulnerable adults which is regarded as gross misconduct so that his/her continued employment is unacceptable, he/she will normally be summarily dismissed without further process. This decision will be taken in accordance with the school's delegated responsibilities under this procedure after appropriate professional advice and discussions with the employee concerned. The provisions under Paragraph 29 will apply. Full documentation will be kept and the employee will have the right of appeal.

19. Where the DBS disclosure does not contain a conviction, but does contain other relevant information, a risk assessment will be carried out and a hearing will be convened where necessary to consider the case under the normal procedure below. The employee may be suspended in accordance with Paragraphs 37-41, where appropriate, while this process is carried out.

The Disciplinary Procedure in Operation

20. All stages of the procedure should be carried out as quickly but as carefully as possible especially in the case of alleged gross misconduct. Where the Headteacher is the subject of the disciplinary procedure, all action at every stage will be taken by a sub-committee of directors appointed by the Board of Directors. If their recommendation is that the Headteacher should be dismissed this must be ratified by the Board of Directors. No action will be initiated without the knowledge of the Chair of the Board who will be kept informed at all stages if not a member of the committee hearing the disciplinary matter.

Investigation

21. Where the allegation is one which could involve physical or sexual abuse of children, the Child Protection Procedures will be considered first, and action taken accordingly (see "Safeguarding Policy").

22. Where the allegation does not involve abuse of children or where it is decided that the Child Protection Procedures are not appropriate, a full and thorough investigation will be made. This investigation is likely to be conducted in the first instance by a senior member of staff or by the Headteacher. However, for serious allegations of gross misconduct or allegations involving the

Headteacher, the Chair of Directors or another director if agreed by the Board will investigate. The Director may involve a professional advisor if s/he thinks it is appropriate. Witness statements and other evidence will be collected where appropriate and practicable.

23. A decision will then be made by the investigator as to whether, on the basis of the evidence, a disciplinary hearing is necessary.

24. All written evidence to be used by either side at the disciplinary hearing will be made available to the other side before the hearing, in time for a proper response to be prepared. If any new evidence appears at the hearing, an adjournment must be offered. All relevant papers must be given to the panel or individual hearing the case.

Disciplinary Hearing

25. Before any disciplinary action is taken, the employee in question will be called to a formal hearing before the staff disciplinary committee or the Headteacher in the case of matters delegated to the Headteacher set out above. At least five working days' notice will be given unless agreed otherwise by mutual consent. The written notice will include:

- The allegations to be discussed at the hearing
- The date, time and place
- The procedure to be followed
- A reminder of the right to be represented or accompanied
- Copies of any written evidence already available

26. When invited to the hearing the employee will be informed in writing that, once the date has been agreed for the hearing, if he/she does not attend the hearing and has not given prior notice of non-attendance, then the hearing will normally go ahead in his/her absence.

27. Where a reasonable cause for non-attendance is given, a letter will be sent by recorded delivery to the employee setting another date and making it clear that, if s/he does not attend without a reasonable cause, the hearing will take place in her/his absence.

28. Sickness covered by a doctor's certificate will normally result in an adjournment until the employee is fit enough to attend. Occupational Health can advise about the fitness of the employee to attend a hearing and to understand the case against them. Where the sickness absence continues for a period of one month or more management will consider whether to hold the disciplinary

29. The Headteacher will not normally hear a disciplinary case without either another member of the leadership team or a HR advisor present.

30. It will make clear that the hearing is a disciplinary hearing, that disciplinary penalties could be imposed at the end of it and that there will be a right of appeal against any penalties.

31. The Headteacher or the Staff Disciplinary Committee hearing the case, will conduct it in accordance with Annex 1 below.

32. A written record will be kept and made available, if requested.

Powers of the Disciplinary Committee

33. The Headteacher or the Disciplinary Committee may decide to dismiss the complaint or may decide that disciplinary action in the form of a penalty is necessary.

34. Disciplinary penalties will normally progress from recorded verbal warning to first written warning, to final written warning and then to more severe penalties. However, there could be occasions when this progression will not be followed. For example, a first written warning may be appropriate without going through the verbal warning stage or dismissal may be necessary for a first but very serious breach of discipline. Breaches of conduct which have resulted in disciplinary action and which are not yet “spent” may lead to progression through the penalties even if they are not of a similar nature.

35. Any warning will specify:

- (i) the reason for the warning, i.e. the nature of the shortcoming
- (ii) the improvement expected, any support to be offered and the time allowed for improvement (this will normally be not less than one month or more than one year but may be open-ended where the nature of the case warrants it)
- (iii) arrangements for review
- (iv) the implications of a failure to improve or of any further shortcomings
- (v) the right of appeal and the person to whom the appeal should be sent

36. Actions available to the Headteacher are:

- recorded verbal warning
- first written warning
- final written warning
- transfer, demotion, withholding increments

Actions available to the staff disciplinary committee are:

- recorded verbal warning
- first written warning
- final written warning
- transfer, demotion, withholding increments
- dismissal with due notice
- summary dismissal (in cases of gross misconduct only)

37. An external adviser may be invited to attend a disciplinary hearing, and to advise the disciplinary committee where this is felt appropriate. If the Headteacher hearing a disciplinary matter thinks that the appropriate sanction is dismissal with due notice or summary dismissal she will refer the matter to the staff disciplinary committee making that recommendation and has power to suspend a member of staff on full pay pending investigation of the matter by the staff disciplinary committee if not already suspended under this procedure if deemed to be in the best interests of Rush Common School.

38. An employee may be suspended on full pay for the purposes of investigation or the protection of individuals prior to the disciplinary hearing by the Headteacher or the staff disciplinary committee. Alternatives to suspension will be considered first; for example, voluntary absence by the employee which has been agreed with the Headteacher or the Chair of the Board of Directors as appropriate.

39. The period of suspension will be reviewed at least 4 weekly and the employee kept informed about progress of the case.

40. Suspension can be imposed by the Board of Directors or the Headteacher. The suspension will be confirmed in writing to the employee and the Board of Directors.

41. Suspension can only be ended by the Board of Directors, normally in discussion with the Headteacher.

Records

42. Employees subject to the disciplinary procedure will have access to all records and correspondence which are relevant to the case. If, at a later date, new evidence emerges which is relevant to the case, appropriate action will be taken. This could include a re-hearing if that is possible.

43. After satisfactory completion of the improvement period (see paragraph 28 (ii) above) the records relating to the case will be removed from the personal file and kept in a separate confidential file held at the school.

Appeals

Employees have the right to appeal against disciplinary action.

44. If an employee wishes to appeal against a disciplinary sanction this must be lodged in writing within two weeks of the receipt of notification of the action. The grounds for appeal must be given in advance (though not necessarily within the two week deadline). Examples of the grounds for appeal include:

- faults in procedure
- new evidence which could not have been available at the first hearing
- a perverse decision
- an excessive penalty

Generally speaking it is advisable to re-hear the whole case at the appeal hearing.

45. Appeals will be heard by a sub-committee of directors not previously involved in the detail of the case. This will be the staff disciplinary committee in the case of an appeal from a Headteacher's disciplinary hearing and the staff appeal disciplinary committee in the case of an appeal from the staff disciplinary committee.

46. The respondent at an appeal hearing will usually be the person who made the case against the employee at the original hearing; but if the grounds for appeal are that the penalty was excessive (see paragraph 29 above) the respondent will be the individual who made the original decision or a member of the original committee.

47. The appeal committee will appoint a chair and the case will be conducted as shown at Annex 1.

48. If the appeal results in confirmation of a decision to dismiss, the appeal committee must inform the Board of Directors immediately; notice of dismissal must then be given to the employee by RCAT within 14 days. In appropriate cases, the DfE and/or the Teaching Agency will be informed.

49. The Appeal committee's decision is final.

Special Cases

Cases involving Headteacher

50. See paragraph 6 above.

Trade Union Officers/Representatives

51. Action against a trade union representative can be subject to legal challenge or could lead to a dispute, if it is seen as an attack on the trade union/association's functions. Therefore no action will be taken against a trade union officer/representative until the circumstances of the case have been discussed with a full-time officer of the union or senior trade union representative.

Criminal Proceedings

52. Where an employee is the subject of criminal proceedings for an offence which it is considered may make the employee unsuitable for her/his type of work or unacceptable to other employees, it will be appropriate to consider whether or not action under the disciplinary procedure is required.

53. It is likely to be appropriate to defer the disciplinary procedure but, in some circumstances, it may be more appropriate to follow the disciplinary procedure without awaiting the outcome of any proceedings. In this case, the normal disciplinary procedure applies and any decision will be based on a reasonable belief following a fair and thorough investigation into the circumstances of the case with the normal interview, hearing and appeal procedure being followed if it is practical to do so.

54. Where an employee is accused of physical or sexual abuse against a child, a separate procedure will be followed (see paragraph 17 above).

ADDITIONAL NOTES

55. In all disciplinary matters, records should be removed from an employee's personal file once they are "spent". They should then be retained separately, but confidentially, within the school, ready to be reported to the Department for Education or the Teaching Agency when required.

56. If a dismissal case goes to an Employment Tribunal Directors will be the respondents. They will need to attend in order to justify their decisions.

57. Directors should ensure that any individual who is the subject of disciplinary investigations or action is given sufficient and appropriate support throughout the process and kept fully informed about progress.

Review of this policy

The Board of Directors, through its Human Resources Committee, review the Policy every three years. It may however review the Policy earlier than this if the government produces new regulations, or if it receives recommendations on how the Policy might be improved.

Reviewed by the Human Resources Committee, approved by the Full Board of Directors of RCAT on 21 October 2015.

Signed: C Wilmshurst

(Chair of Board of Directors)

Signed : L Youngman

(Headteacher)

Date for Review: October 2018

Annex 1

Guidance regarding Conduct of a Staff Disciplinary Hearing or Staff Disciplinary Appeal Hearing and procedures relating to them.

Evidence at hearings

1. All parties will have an opportunity to challenge any evidence which is being used so it is essential that all written evidence is made available beforehand, preferably a week before the hearing. If new evidence appears at the last moment, an adjournment of the hearing may be necessary. Hearsay evidence (i.e. evidence which relies on quotation from a third party who cannot give evidence in person or by written statement) should not be used.
2. Anonymous evidence will not be used. The only exceptions to this will be (a) where the allegations are serious and can be verified through independent investigation or (b) if a potential witness has a real fear, reasonably held that they will suffer substantial detriment if they were to sign their statement.
3. Statements can be obtained from children under 16 only with the agreement of the parent or guardian, who should be given the opportunity to be present when the evidence is being collected. However, there could be an exception where children are witnesses to an incident and their version of events needs to be obtained as quickly as possible before memory fades and before they have discussed it with others. In this case, if parents cannot be informed immediately, the children will be asked to make their statements in the presence of a second adult whose express responsibility it is to look after their best interests. Their parents will be advised as soon as possible afterwards. Children will not be called to give evidence to a hearing in person.

Conduct of formal hearings under this procedure

Note: for the purposes of this procedure the reference to “Chair” is a reference to the person requested to chair the committee meeting unless the Chair of Board is specified

1. The Chair introduces those present.
2. The Chair invites the person presenting the case against the employee to identify the areas of alleged default and to bring forward any witnesses or witness statements.
3. The Chair invites the employee and her/his representative to ask questions.
4. The sub-committee members, or the Chair if there is no sub-committee, ask questions of the person presenting the case.
5. The Chair invites the employee and/or representative to respond in full to the case presented against them and to bring forward any witnesses or witness statements.
6. The Chair invites the person presenting the case against the employee to ask any questions.

7. The Chair invites the members of the panel, if appropriate, to ask questions of either party and asks any questions her/himself. Either party is invited to address to the chair any comment arising from the question or the reply.
8. The Chair invites the person presenting the case to summarise it. No new evidence can be presented at this stage.
9. The Chair invites the employee or her/his representative to summarise their case. No new evidence can be presented at this stage.
10. The Chair asks both parties to withdraw while s/he or the sub-committee gives consideration to the case and come to a conclusion. If the sub-committee needs to clarify any point with one or both of the parties, both parties should be recalled.
11. The Chair will call back both parties either to announce the decision or to advise that a decision will be communicated in writing within three working days.

Non attendance at hearings

If the complainant does not attend the hearing it will be adjourned and another date set and the employee will be notified. Sickness which is covered by a doctor's certificate will result in an adjournment until the employee is fit to attend. Advice may be sought about the fitness of an employee to attend a hearing and to understand the case against them. If the employee does not attend the adjourned hearing and has no reasonable excuse for not attending it will be assumed that s/he no longer wishes to pursue the grievance and it will be closed.

Guidance Notes on Informal Interviews of Employees

1. Counselling through an informal, recorded interview may often be a more satisfactory method of resolving problems than via the formal disciplinary procedure.
2. It should take the form of a two-way discussion with the objective of encouraging and helping the employee to improve.
3. It should always be held in private and the employee should be allowed to put forward an explanation for any alleged misconduct or shortcomings and bring a "friend" to the discussion, if they wish.
4. An informal interview should not be allowed to turn into a formal disciplinary interview. If it becomes evident that the matter should be dealt with under the Disciplinary Procedure, the counselling interview should be adjourned and it should be made clear that the matter will be pursued under the formal procedure.
5. It is important to ensure that the employee understands fully the outcome of the interview, including any improvement required, how performance or conduct will be reviewed, and over what period.
6. The interviewer should therefore keep a record of the conversation for sight of the interviewer and interviewee only. A copy of this should be supplied to the interviewee.
7. Any disagreement by the interviewee as to the accuracy of the record should be noted.

8. The record of the interview should be kept separate from the personal file and destroyed after a maximum of six months if no further action has been taken.
9. If the matter is agreed to be of minor importance, no record needs to be kept at all.
10. If the matter proceeds to the formal Disciplinary Procedure, the outcomes of the informal recorded interview may be used as evidence of progress.

FLOW CHART SHOWING HOW PROCEDURE WORKS

