



# STAFF DISCIPLINARY PROCEDURE

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*Policy adopted on:*

*Date of review:*

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## **DISCIPLINARY PROCEDURE FOR EMPLOYEES OF SEVAK EDUCATION TRUST: SEVA School**

### **1.0 INTRODUCTION**

- 1.1 The Trust and School is committed to the highest levels of competence and conduct and strives to ensure a safe and efficient workplace for all employees. It is recognised that discipline is necessary for the efficient operation of the School and for the health and safety at work of all employees; and that a disciplinary procedure is necessary to assist in maintaining standards of conduct and for promoting fairness and order in the treatment of individuals.
- 1.2 This procedure has been produced to help promote orderly employment relations as well as fairness and consistency in the treatment of all employees. It is designed to encourage an improvement in an individual's conduct where necessary and not merely a method of applying disciplinary sanctions.
- 1.3 This document sets out the disciplinary procedure to be followed by the Trust Board and the Local Governing Body and Executive Principal of the School in the maintenance of acceptable standards of conduct and behaviour of employees in the School.
- 1.4 This procedure will remain in force until amended or withdrawn by the Trust Board after reasonable notice and consultation with the relevant trade unions.
- 1.5 The Trust and Local Governing Body are responsible for the conduct and discipline of all staff in the School although most disciplinary matters will, in the first instance, be dealt with by the Executive Principal. The employee should be informed of the details of any allegation.
- 1.6 The Local Governing Body will establish a Committee of not less than 2 members of the Local Governing Body to hear disciplinary cases involving the Executive Principal or in which the Executive Principal has had prior involvement and a separate Committee of at least equal number to hear appeals.

### **2.0 THE PROCEDURE**

- 2.1 The Procedure applies to all employees within the School.

#### **Informal Action / Management Instruction**

- 2.2 Cases of minor misconduct will be dealt with informally initially. A discussion will take place with the employee and the relevant line Manager outlining the issue(s) and setting out the improvement(s) required. No formal action will be taken but a note / Management Instruction will be placed on the employee's file and will remain live for a period of six months.

- 2.3 When matters of concern are being dealt with on an informal basis there is no requirement for the employee to be accompanied at meetings between the employee and his or her Manager. There will be no appeal against the informal action.
- 2.4 If an employee disagrees with the outcome, recourse will be available through the grievance procedure.
- 2.5. Where an informal approach has been used but improvement has not been achieved, the formal process will be instigated.

### **Formal Action**

- 2.6 Breaches of reasonable conduct at work leading to formal disciplinary action can take various forms. Examples of the type of conduct which **may** lead to dismissal on grounds of gross misconduct and the types of conduct which **may** lead to disciplinary action because of misconduct are shown at Appendix A.

### **Representation**

- 2.7 Employees have the right to be accompanied by a work colleague or accredited trade union representative who may make representations on their behalf at all formal stages of this procedure. Where ever possible, meetings will be held during the normal school day.

### **Precautionary Suspension**

- 2.8 Where appropriate the Executive Principal or the Chair of the Local Governing Body may suspend any employee from work pending investigation of alleged misconduct. The Local Governing Body should be informed of the suspension, but not the details of the incident or allegation, at the earliest opportunity.
- 2.9 Precautionary suspension is only appropriate where:-
  - (i) The allegation if substantiated would amount to gross misconduct (i.e. conduct which would go to the root of the contract).
  - or
  - (ii) Not to suspend would potentially interfere with the investigation.
- 2.10 Employees will be suspended on normal pay (i.e. without loss of earnings). Such precautionary suspension is not disciplinary action, nor a presumption of guilt. The investigation will be undertaken as soon as possible after the suspension.

### **Investigation**

- 2.11 When a disciplinary matter arises, the Executive Principal or delegated Senior Manager should first establish the facts promptly, before recollections fade or distort, and take written statements from all witnesses. The employee will be further informed that their conduct or behaviour is in question and of the allegations surrounding any incident. If the employee is to be interviewed during the investigation it should be made absolutely clear that the interview is for investigation purposes and is not the disciplinary hearing. The employee must be given the opportunity to seek union advice before making a statement and/or be accompanied

by a work colleague or accredited trade union representative. The Executive Principal or delegated Manager should take notes of all investigatory meetings.

**NB1** In cases of alleged abuse of children, refer to the Trust's and the Local Safeguarding Board's Child Protection Procedures.

**NB2** If the Executive Principal intends to hear the disciplinary case should one prove necessary, he/she should not undertake the investigation.

2.12 Witnesses should make written statements and will be advised that they may be required to attend the disciplinary hearing at the request of either party. They should be warned that the matter is confidential and must not be discussed with anyone and that statements will be made available to the employee involved.

2.13 The matter having been investigated, the Executive Principal or delegated Manager will determine what course of action should be followed. This may be that:-

- i) There is no case to answer.
- ii) Staff are to be given advice as to their future conduct as an informal action. This will be confirmed in writing.
- iii) A formal disciplinary hearing will be convened to be heard by:-
  - (a) The Executive Principal or
  - (b) A Panel of the Local Governing Body when it concerns the Executive Principal or the Executive Principal has been involved in an earlier stage.

### **3.0 Disciplinary Action against the Executive Principal**

3.1 Disciplinary action against the Executive Principal will not be initiated without the involvement of the Chair of the Local Governing Body and a Director of the Trust.

### **4.0 Disciplinary Action against Trade Union Representatives**

4.1 Although normal disciplinary action must be taken when appropriate against trade union representatives, no such action should be taken until the circumstances of the case have been discussed by the Executive Principal or HR Advisor with a senior trade union official.

### **5.0 DISCIPLINARY HEARING**

5.1 The Executive Principal or Panel of the Local Governing Body should, as soon as practicable, hold a disciplinary hearing. The employee will be requested in writing (with at least 5 working days' notice) to attend the hearing. He/she will be informed of the allegation(s) to be considered and be provided with copies of the disciplinary procedure and all the evidence to be presented at the hearing. He/she will also be advised of the names of witnesses to be called. The employee will be reminded of the right to be accompanied at the hearing by a work colleague or accredited trade union representative. Where the employee or trade union representative is

unavailable, an alternative date should be proposed within 5 working days of the original date.

- 5.2 Where possible, the hearing will be arranged within 10 working days following the conclusion of the investigation. If the employee has been suspended from duty and it is not possible to adhere to the normal time scale, the employee will be kept up to date in writing to explain the reasons for the delay. If the hearing is to be conducted by the Executive Principal the delegated person (normally the Investigating Officer) will present the findings of the investigation to the hearing. This may include witness statements which may be supported by presentation of oral evidence by the witnesses themselves and other written evidence. The employee will then have the opportunity to state their case, ask questions, present evidence and call witnesses. Minutes of the meeting will be agreed with the employee where possible and circulated to all parties.
- 5.3 The Executive Principal will decide what action to take, after an adjournment if necessary, and will inform the employee and their representative accordingly. The decision will be confirmed in writing as soon as possible.
- 5.4 If the allegation(s) are considered to be unfounded the employee will be so informed. Confirmation will be given in writing and no further action will be taken.
- 5.5 When the hearing is to be conducted by a Panel of the Local Governing Body the Investigating Officer or Clerk to the Committee should notify the employee, the Governors and any witnesses of the date of the hearing. The information circulated should be as detailed in 5.1 above.

## **6.0 ACTION FOLLOWING INVESTIGATION**

### **No Further Action**

- 6.1 This should be communicated to the employee in writing.

### **Informal Action/Management Instruction**

- 6.2 The employee should be advised of the areas of concern and the improvement required. The concerns should be explained in detail in a constructive manner with clear examples given where possible. The employee should be left in no doubt of the improvement required and strategies for support, monitoring and a timescale should be agreed. This should be confirmed in writing to the employee with a copy provided for his/her representative.

### **Written Warning**

- 6.3 If the offence is of a more serious nature, or if a further offence occurs within the currency of previous informal action, a written warning may be given to the employee. This will give details of the complaint, the improvement required and the consequences of future misconduct. It will warn that further action will be considered if there is no satisfactory improvement or any further breach of conduct and will advise of the right of appeal. A copy of this written warning will remain in the employee's file and remain valid for a period of 12 months from the date of the letter confirming/giving the final written warning.
- 6.4 Copies of the written warning will be sent to the employee and his/her representative (if appropriate).

### **Final Written Warning**

- 6.5 If there is still a failure to improve and conduct or behaviour is still unsatisfactory within the currency of a written warning, or if the misconduct is sufficiently serious to warrant only one written warning a final written warning may be issued to the employee. This will give details of the complaint, will warn that dismissal may result if there is no satisfactory improvement or a further breach of conduct and will advise of the right of appeal. A copy of this final written warning will remain in the employee's file and remain valid for a period of 18 months from the date of the letter confirming/giving the final written warning.
- 6.6 Copies of the final warning will be sent to the employee and his/her representative (if appropriate).

### **Dismissal**

- 6.7 If the conduct or behaviour is still unsatisfactory and the employee still fails to reach the prescribed standards after receipt of a final written warning, dismissal with notice may apply. Dismissal without notice (SUMMARY DISMISSAL) may apply in cases of gross misconduct regardless of any, or the absence of, written warnings.
- 6.8 The Executive Principal has delegated authority to dismiss an employee; however, if the Executive Principal has been involved in an earlier stage of the disciplinary process, a Panel of the Local Governing Body must consider the appropriate disciplinary action and has the sole authority to dismiss an employee.
- 6.9 The Executive Principal or Panel of the Local Governing Body as appropriate will conduct a full hearing of the case.
- i) The Investigating Officer will normally present the case to the Executive Principal or Panel and the employee and/or their representative will be able to respond.
  - ii) After full consideration of all of the evidence the Executive Principal or Panel will decide whether or not to dismiss the employee, impose a lesser penalty or reject the allegations entirely or in part.

### **Alternative to Dismissal**

- 6.10 The Executive Principal or Panel may decide that the misconduct warrants dismissal but having regard to extenuating circumstances may substitute alternative action short of dismissal. If the employee agrees, this may include demotion to a lower graded post without protection of salary, provided there is scope within the School's staffing establishment. A final written warning will usually be given in conjunction with demotion.

### **Right of Appeal**

- 6.11 Employees have the right of appeal to the Executive Principal or an Appeals Panel of the Local Governing Body against decisions of a Disciplinary Panel or the Executive Principal. The appeal may be against the decision taken, the sanction imposed or the procedure adopted.

- 6.12 Appeals must be submitted in writing to the Executive Principal or the Clerk to the Panel within 5 working days from the date of written notification of the decision. A copy should be sent to the Executive Principal.
- 6.13 Employees have no right of appeal beyond the Appeals Panel.

### **Holding an Appeal**

- 6.4 The Appeals Panel will have the authority to uphold the original decision or to substitute a lesser penalty or to reject the original decision.
- 6.5 No member of the Appeals Panel (including nominated substitutes) will be involved in any preceding disciplinary action.
- 6.6 The appeal hearing should be convened as quickly as possible, normally within 3 working weeks of receipt of the appeal.
- 6.7 An appeal will be conducted in accordance with the agenda shown in Appendix 2 (with the exception of 11b). Both parties may introduce new evidence.

### **7.0 Grievance raised during disciplinary case**

- 7.1 If an employee raises a grievance in the course of a disciplinary process that is related to the case; management will consider suspending the disciplinary procedure for a short period while the grievance is dealt with. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently. Depending on the nature of the grievance, management may consider bringing in another member of management to deal with the disciplinary process. If this is not possible, the existing manager will deal with the case as impartially as possible.

### **8.0 Absence during a disciplinary procedure**

- 8.1 It is important, both for the benefit of the employee and employer that the disciplinary process is concluded promptly and an outcome reached without undue delay. Where an employee is absent prior to the commencement of, or during the course of the disciplinary procedure because of ill-health or other reasons, they will be given the opportunity to attend any investigatory meetings and subsequent disciplinary hearing, if convened. The employee will also be given a copy of any documentation to be used at a disciplinary hearing.
- 8.2 In the case of absences due to ill-health a medical opinion will be requested from an Occupational Health Specialist. If the employee does not agree to medical information being provided or fails to attend an appointment with an Occupational Health Specialist, a decision may have to be taken without the benefit of such information.
- 8.3 If an employee continues to be unavailable to attend a disciplinary hearing, he or she may make a written submission or be represented at the hearing by a work colleague or trade union representative who may respond on behalf of the employee. Otherwise, a decision may be taken in the employee's absence, based on the available evidence.

## **9.0 Criminal Charges or Convictions**

- 9.1 If an employee is charged with, or convicted of, a criminal offence not related to work, this may not in itself be a reason for disciplinary action. Management will establish the facts of the case and consider whether the matter is serious enough to warrant starting the disciplinary procedure. The main consideration will be whether the offence, or alleged offence, is one that makes the employee unsuitable for their type of work.
- 9.2 Where an employee, charged with or convicted of a criminal offence, refuses or is unable to cooperate with the School's disciplinary investigations and proceedings, this will not prevent action being taken. The employee may be advised in writing that unless further information is provided a disciplinary decision will be taken on the basis of the information available and could result in dismissal.
- 9.3 All decisions following disciplinary meetings will be forwarded to the employee in writing.

## **10.0 Retention of Records**

- 10.1 A formal warning will remain effective during the period of time specified. This means that it will be taken into consideration, as part of the cumulative process, when determining the level of disciplinary action warranted for any further offences which may occur during the period.
- 10.2 At the end of the specified period the formal warning will expire. This does not mean that the warning should be removed from the employee's personal record but that it should be disregarded when determining the level of further disciplinary action. Previous warnings form part of the employee's work history and should remain on file for reference purposes.



**EXAMPLES OF MISCONDUCT**

<b>Gross Misconduct</b>	<b>Misconduct</b>
<ul style="list-style-type: none"> <li>• Physical violence or bullying</li> <li>• Incapacity brought on by alcohol, illegal drugs or misuse of prescription drugs</li> <li>• Substantial abuse of position and power</li> <li>• Repeated refusal to comply with a reasonable management instruction/request</li> <li>• Serious breach of the Equality &amp; Diversity Policy and Codes of Practice</li> <li>• Unlawful discrimination or bullying/harassment</li> <li>• Bringing the Trust and/or School into disrepute</li> <li>• Theft or fraud</li> <li>• Deliberate or serious damage to School/Trust property, facilities, equipment or products</li> <li>• Deliberately accessing and circulating illegal, pornographic, offensive or obscene material.</li> <li>• Serious breach of the Trust's Code of Conduct</li> <li>• Serious breach of the Child Protection Policy &amp; Procedures</li> <li>• Serious breach of access/usage/sharing/releasing of Trust/School information</li> <li>• Serious breach of the Trust's Computer Security/Use of Internet &amp; Email Policy</li> <li>• Cause loss, damage or injury through serious negligence</li> <li>• Serious insubordination</li> <li>• Serious breach of confidence</li> <li>• Serious breach of Health and Safety Policy/Procedures</li> <li>• Deliberate falsification of records in an attempt to defraud the School/Trust</li> <li>• Abuse of Attendance Management Procedures</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to comply with a reasonable management instruction/request</li> <li>• Abusive, objectionable or insulting behaviour</li> <li>• Foul or abusive language</li> <li>• Disorderly conduct</li> <li>• Unauthorised sleeping on the premises whilst on duty</li> <li>• Unauthorised absence from place of work</li> <li>• Displaying or circulating offensive material</li> <li>• Abuse of position and power</li> <li>• Breach of Trust and/or School Policies and Procedures</li> <li>• Allowing visitors on the premises without authorisation</li> <li>• Unauthorised distribution of written or electronic material</li> <li>• Failure to return tools or equipment provided by the School</li> <li>• Deliberately accessing and storing illegal documents/ information</li> <li>• Negligence, carelessness or recklessness which could result in damage or misuse of School/Trust property, facilities, equipment or products</li> <li>• Undertaking work in conflict with the School/Trust</li> <li>• Breach of the Trust's Code of Conduct</li> <li>• Inappropriate access/usage/sharing/releasing of Trust/School Information</li> <li>• Breach of Computer Security/Use of Internet &amp; Email Policy</li> <li>• Failure to observe health and safety requirements</li> <li>• Neglect of safety standards</li> <li>• Failure to wear essential protective equipment</li> </ul>

## DISCIPLINARY PROCEDURE

### PROCEDURE FOR HEARING CASES BY THE EXECUTIVE PRINCIPAL OR DISCIPLINARY PANEL OF THE LOCAL GOVERNING BODY / TRUST BOARD UNDER THE DISCIPLINARY PROCEDURE

1. Introduction by the Executive Principal or Chair of the Panel and a reminder to all present of:
  - a) the Disciplinary Procedure under which the meeting has been called;
  - b) the manner in which the meeting will be conducted as set out below in paragraphs 2-11;
  - c) the degree of confidentiality;
  - d) those present and the purpose of the hearing;
  - e) the nature of the complaint;
  - f) the supporting evidence.
2. Presentation by the Investigating Officer or nominated person to the Panel, including evidence from witnesses (where appropriate). When witnesses have given evidence and answered all questions put to them, they should leave the room.
3. Questions by the Executive Principal, Manager or Governors and the member of staff and/or his/her representative on the evidence.
4. Statement(s) by the member of staff and/or their representative including evidence from witnesses (where appropriate). When witnesses have given evidence and answered all questions put to them, they should leave the room.
5. Questions by the Executive Principal or Governors or nominated person on the evidence.
6. Opportunity for the Management Representative presenting the case to summarise the management case.
7. Opportunity for the member of staff and/or representative to summarise his/her response.
8. Withdrawal by the member of staff and/or representative(s) and the nominated person whilst the Panel considers the matter.
9. Consideration of the matter by the Executive Principal or Panel of governors. In the event that further information or clarification is needed from any of the persons who have left the meeting then all such persons should return to the meeting when such information is obtained. An opportunity should be given to each party to question or comment upon this additional information.

10. If there is no clear view about the facts presented by both parties, i.e. they are disputed, the Executive Principal or the Panel will decide on the balance of probability what version of the facts they accept.
11. If any new facts emerge during the presentation of either statements at stages (2) or (4) of the Procedure, the Executive Principal or Panel of Governors should:
  - a) decide whether further investigation is required;
  - b) if so, adjourn the hearing and reconvene when the investigation is completed.
12. Before deciding upon the penalty the Executive Principal or Panel should consider:
  - a) the gravity of the offence and whether further guidance is needed;
  - b) the member of staff's disciplinary record and general service;
  - c) any mitigating circumstances;
  - d) whether the penalty to be imposed is reasonable in all the circumstances.
13. Recall of parties concerned to hear the decision of the Executive Principal or Panel.

The Executive Principal or Chair of the Panel should:

  - a) clearly inform the member of staff of the decision and the penalty, if any;
  - b) explain the right of appeal and how the appeal mechanism operates;
  - c) in the case of a warning, explain what improvement is expected, how long the warning will last and what the consequences of a failure to attain the required improvement may be.
14. Confirmation of the decision of the Executive Principal or Panel in writing to all parties concerned.

Appeals Hearing
15. The Appeal will be heard by an Appeals Panel of the Local Governing Body which will not include any member of the Disciplinary Panel involved in the original hearing.

**PROCEDURE FOR HEARING APPEALS BY THE APPEALS COMMITTEE  
OF THE LOCAL GOVERNING BODY / TRUST BOARD UNDER THE  
DISCIPLINARY PROCEDURE**

1. Introduction by the Chair of the Appeals Panel and a reminder to all present of:
  - a) the Policy on Discipline under which the meeting has been called;
  - b) the manner in which the meeting will be conducted as set out below in paragraphs 2-11;
  - c) the degree of confidentiality;
  - d) those present and the purpose of the hearing;
  - e) the supporting evidence.
2. Presentation by the Investigating Officer or nominated person to the Panel, including evidence from witnesses (where appropriate). When witnesses have given evidence and answered all questions put to them, they should leave the room.
3. Questions by the Panel and the member of staff and/or his/her representative on the evidence.
4. Presentation by the member of staff and/or their representative, including evidence from witnesses (where appropriate). When witnesses have given evidence and answered all questions put to them, they should leave the room.
5. Questions by the Panel and the Executive Principal or nominated person on the evidence.
6. Opportunity for the Executive Principal or nominated person to summarise the management case.
7. Opportunity for the member of staff and/or representative to summarise his/her case.
8. Withdrawal by the member of staff and representative(s) and the Executive Principal or nominated person whilst the committee considers the matter.
9. Consideration of the matter by the Panel of governors. The clerk to the meeting, will be present during the deliberations. In the event of that further information or clarification is needed from any of the persons who have left the meeting then all such persons should return to the meeting when such information is obtained. An opportunity should be given to each party to question or comment upon this additional information.
10. If there is no clear view about the facts presented by both parties, i.e. they are disputed, the governors should decide on the balance of probability what version of the facts they accept.
11. If any new facts emerge during either presentations of the Procedure, the Appeals Panel should:

- a) decide whether further investigation is required;
  - b) if so, adjourn the appeal hearing and reconvene when investigation is completed.
12. Before reaching a decision the Panel should consider:
- a) all the information presented by both parties;
  - b) any mitigating circumstances;
  - c) whether the penalty to be imposed is reasonable in all the circumstances;
  - d) any decision must be reasonable and fair;
  - e) the member of staff's disciplinary record and general service.
13. Recall of parties concerned to hear the decision of the committee orally (if appropriate and practical).
- The Chair of the Appeals Panel should clearly inform the member of staff of the decision.
14. Confirmation of the decision of the committee in writing to all parties.