



Holy Family of Nazareth Catholic Academy Trust

Disciplinary Policy and Procedure

Date of policy: **October 2019**

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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 Academy (hereinafter referred to as an "employee" or "you").
- 1.2 The purpose of the procedure is to provide a structure to address any issues or concerns that the Academy Trust/Academy may have relating to an employee's conduct.
- 1.3 An employee is entitled to have access by arrangement to their personnel file and to request the deletion of time-expired records in line with the provisions of the General Data Protection Regulations (GDPR).
- 1.4 The Academy Trust delegates their authority in the manner set out in this procedure.
- 1.5 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 Academy's Capability Policy and Procedure may be used concurrently whilst the Academy endeavours to ascertain if the behaviour is misconduct or lack of competence.
- 1.6 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 Academy's Sickness Absence Policy and Procedure. In particular, if an employee is absent from Academy on sick leave following this Disciplinary Policy and Procedure being invoked, the Academy may use its Sickness Absence Policy and Procedure depending on the specific circumstances.

- 1.7 Subject to paragraph 1.2(a) and (b) of the Academy's Grievance Resolution Policy and procedure there may be occasions when an employee attempts to use the Academy's Grievance Resolution Policy and Procedure in connection with actions taken under this Disciplinary Policy and Procedure. This shall not lead to any delay or pause in the conduct of any matters under this Disciplinary Policy and Procedure.
- 1.8 There may be occasions where this procedure needs to be modified to comply with the requirements of the Academy's Child Protection and Safeguarding Policies, for example, by allowing the Local Authority Designated Officer to offer advice to Governors at appropriate stages.
- 1.9 In this policy "working day" means any day on which you would ordinarily work if you were a full-time employee. In other words, 'working day' will apply differently to teaching and non-teaching staff. However, full time staff and part-time staff will not be treated differently for the purpose of implementing this policy and procedure.
- 1.10 The Academy is committed to ensuring respect, objectivity, belief in the dignity of the individual, consistency of treatment and fairness in the operation of this policy. This commitment extends to promoting equality of opportunity and eliminating unlawful discrimination throughout the Academy community.
- 1.11 This Disciplinary Policy and Procedure offers opportunities to ensure justice for teachers, support staff and pupils alike and has the potential for the expression of Christian qualities such as honesty, self-knowledge, respect for others and their gifts, recognition of the needs and achievements of others, challenge of self and others, personal growth and openness.
- 1.12 Relevant information from the appraisal process, including the Appraisal Report, may be taken into account in this Disciplinary Policy and Procedure and/or the Academy's Capability Policy and Procedure. It should be noted that the Appraisal Policy and Procedure does not form part of this Disciplinary Policy and Procedure or any other policy or procedure.
- 1.13 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.
- 1.14 The Academy will maintain records of all interviews and reviews which take place under this Disciplinary Policy and Procedure for a period of up to 12 months or longer and where there is an applicable lawful basis under the GDPR for extending the retention period. All data and evidence collected is to be shared between all the relevant parties, where appropriate and where there is an applicable lawful basis under the provisions of the GDPR.

2. Informal Action

- 2.1 Sometimes potential disciplinary issues can be resolved informally in the workplace. This involves drawing the employee's attention to the perceived unsatisfactory conduct.
- 2.2 Your line manager may give you informal warnings at any time about any conduct or performance falling short of the standard expected and, in many cases, the right word at the right time and in the right way may be all that is needed.
- 2.3 A statement of concern may be verbal or 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. Written statements of concern will not normally be kept on record for longer than 12 months depending on the circumstances and should not be regarded as disciplinary sanctions.
- 2.4 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 Principal/Head Teacher or the Chair may suspend you for a period of up to ten working days.
- 3.2 Depending on the specific circumstances; the employee should be given the opportunity to attend a suspension meeting to comment on the perceived necessity to suspend within the context of the investigatory purpose before a decision is taken to suspend. The employee may be accompanied by a Companion during the suspension meeting, where practicable.
- 3.3 A record should be kept of the determined purpose of the suspension for a period of up to 12 months and of any alternatives to suspension that were considered.
- 3.4 The Principal/Head Teacher must inform the Chair of the suspension or, in the event of suspension by the Chair, the Chair must inform the Academy Trust (excluding staff Directors and/or Governors).
- 3.5 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 as soon as reasonably practicable.
- 3.6 Only the Academy Trust may end the suspension.
- 3.7 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.
- 3.8 ACAS suggests that suspension may, whilst investigations are carried out, be appropriate where:
 - (a) Relationships have broken down
 - (b) Gross misconduct is alleged
 - (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.
- 3.9 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).
- 3.10 During a period of suspension, the Academy may require that you do not:
 - 3.10.1 Attend the Academy at any time (except with the prior agreement of the Principal/Head Teacher or Chair);
 - 3.10.2 communicate in any way with parents, pupils or governors except:
 - (a) with the prior agreement of the Principal/Head Teacher/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 data breach or breach of confidentiality.
 - 3.10.3 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 agreement of the Principal/Head Teacher/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.

3.11 During a period of suspension, the Academy may suspend your access to your email account and to the Academy network.

3.12 During a period of suspension, the Academy may take such steps as necessary to cover your lessons or other commitments.

3.13 During any period of suspension your contractual duties to the Academy and to the Academy Trust (whether express or implied) remain in force and enforceable.

4. Investigating, Disciplinary and Appeal Managers

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:

Employee Level	Investigating Manager	Disciplinary Manager	Appeal Manager
Principal/Head Teacher	Chair or a non-staff Director/ Governor (other than the Vice Chair) nominated by the Chair	Directors'/Governors' Disciplinary Panel appointed by the Vice-Chair	Directors'/Governors' Appeal Panel appointed by the Vice-Chair
Other Leadership Spine and Business Manager	Principal/Head Teacher	Chair or a non-staff Director/ Governor (other than the Vice Chair) nominated by the Chair	Directors'/Governors' Appeal Panel appointed by the Vice-Chair
Other Teaching Staff	(1) A member of Leadership Team (other than Principal/Head Teacher) appointed by the Principal/Head Teacher, or in the event that (1) above cannot be complied with, (2) A person appointed by the Principal/Head Teacher	Principal/Head Teacher OR In cases where there is a real risk of dismissal, the Chair or a non-staff Governor (other than the Vice Chair of Governors) nominated by the Chair of Governors.	Directors'/Governors' Appeal Panel appointed by the Chair
Other Support Staff	A person appointed by the Principal/Head Teacher	Principal/Head Teacher Or In cases where there is a real risk of dismissal, the Chair of Governors or a non-staff Governor (other than the Vice Chair of Governors) nominated by the Chair of Governors.	Directors'/Governors' Appeal Panel appointed by the Chair

4.2 In cases relating to any alleged gross misconduct that would bring the Academy into disrepute, particularly in relation to its religious character, the Chair may act as Investigating Manager regardless of the level of the employee involved and the Disciplinary Manager may be the Governors' Disciplinary Panel.

- (*) In the case of disciplinary action involving Other Teaching Staff and Other Support Staff, the Principal/Head Teacher should be appointed as Disciplinary Manager. However, if there is a real risk that in the event of the allegations being proven, a member of Other Teaching Staff or Other Support Staff could be dismissed, the Chair of Governors or a non-staff Director/Governor appointed by the Chair (other than the Vice-Chair) must act as the Disciplinary Manager.

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5. Formal Process

5.1 Step 1 - Investigation

- 5.1.1 The Investigating Manager will conduct an investigation into the alleged misconduct in a timely manner and without delay.
- 5.1.2 The Investigating Manager may appoint any other person from within the Academy or an external third party to assist in the investigation.
- 5.1.3 The Investigating 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 as soon as is reasonably practicable.

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 as soon as reasonably possible, inviting you to the Disciplinary Meeting. If dismissal is a possible outcome this will be stated in the Disciplinary Manager’s letter. The letter shall state that any documentation you wish to rely on must be submitted at least 3 days ahead of the Disciplinary Meeting.
- 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 the you; and
- (c) Where misconduct is admitted, whether in whole or in part, any evidence presented 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 will hear oral evidence when it is considered appropriate to do so and where this will help to assist the investigation process. However, the Disciplinary Manager 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 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. If you are unavailable on the proposed date an alternative date will be offered if possible,

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

5.3.7 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.

5.3.8 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;
- (b) the Appeal Manager may uphold the employee's appeal and overturn the decision of the Disciplinary Manager;
- (c) the Appeal Manager may impose a lesser sanction.

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 Board may exercise that clause so that you are not required to attend the Academy 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

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

6.4 Dismissal without notice or compensation

6.4.1 Dismissal without notice or compensation (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 Academy Trust.

6.4.2 For the avoidance of doubt the 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 Academy considers may amount to gross misconduct:

- (a) Conduct incompatible with, or prejudicial to, the religious character of the Academy or the precepts or tenets of the Catholic Church
- (b) Conduct that is likely to bring the Academy 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 Principal/Head Teacher 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 Academy 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 reasonable, and/or lawful and/or 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
- (u) Misuse of the Academy'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 Principal/Head Teacher
- (w) Interacting with a pupil online out of Academy 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 Academy, a parent, pupil, colleague or Director / 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 Academy, a parent, pupil, colleague or Director / Governor

6.5 In all cases where the formal sanction involves dismissal, the Disciplinary Manager will recommend to the Academy Trust that your employment is terminated in accordance with your contract of employment (where appropriate) and the Academy Trust 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 Directors'/Governors' Disciplinary and Appeal Panels shall comprise three non-staff directors/governors not previously involved in the matter and shall not comprise the Chair or Vice-Chair unless there are insufficient numbers of non-staff directors/ governors not previously involved in the matter, in which case the Chair and/or Vice-Chair may be appointed to a Directors'/Governors' Disciplinary or Appeal Panel.

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

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;
- (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 Academy 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 Academy day.
- 9.4 Not be held on days on which you would not ordinarily work unless you agree otherwise.
- 9.5 Be extended by agreement between the parties if the time limits cannot be met for any justifiable reason.

10. Venue for Interviews or Meetings

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

11. Assistance

- 11.1 In any case concerning the religious character of the Academy, the Diocesan Schools Commission must be notified immediately the Academy 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 Principal/Head Teacher or to a person on the Leadership Spine, or to potential or actual dismissal of any other member of staff, the Diocesan Schools Commission may send a representative to advise the Disciplinary Manager or Appeal Manager.

12. Trade Union Officers

The Academy 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 (or other relevant employee) is dismissed for serious misconduct (or may have been dismissed for serious misconduct if the employee had not resigned) the Academy must consider whether to refer the circumstances to the Teaching Regulation Agency (TRA).
- 13.2 Where a person working within the Academy (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

the Academy must refer that person to the Disclosure & Barring Service ("DBS") under section 35 of the Safeguarding Vulnerable Groups Act 2006. The Academy must also have to refer them to the TRA, if they were not employed as a teacher but engaged in teaching work.

