

**Wellspring Academy Trust**  
**Disciplinary Policy**

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Date Approved by Board:	July 2019
Date of Review:	July 2022
Responsible Department:	Human Resources
Policy Applies to:	Wellspring Trust and all Academies within the Trust

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*The Equality Act 2010 requires public bodies, in carrying out their functions, to have due regard to the need to:*

- eliminate discrimination and other conduct that is prohibited by the Act*
- advance equality of opportunity between people who share a protected characteristic and people who do not share it*
- foster good relations across all characteristics - between people who share a protected characteristic and people who do not share it.*

*In the development of this policy due regard has been given to achieving these objectives.*

## Contents Page

1.	Introduction	Page 3
2.	Scope	Page 3
3.	Principles	Page 3
4.	Examples of Gross Misconduct/Misconduct	Page 4
5.	Safeguarding	Page 5
6.	Alleged Criminal Offenses	Page 5
7.	Referrals	Page 6
8.	Raising a Grievance	Page 6
9.	Sickness Absence	Page 6
10.	Initial Assessment	Page 7
11.	Early Intervention/Informal Action	Page 7
12.	Suspension	Page 7
13.	Formal Action	Page 8
14.	Conducting an Investigation	Page 8
15.	Disciplinary Hearing	Page 9
16.	Outcome of the Disciplinary Hearing/Appeal	Page 10
17.	Right of Appeal	Page 12
18.	Monitoring and Review	Page 13

**Appendix 1**    **Process at Formal Disciplinary Hearings and Appeals**

**Appendix 2**    **Template Disciplinary letters**

**Appendix 3**    **Appeal Form**

**Appendix 4**    **Disciplinary Flowchart**

## **1. Introduction**

- 1.1. Wherever possible, matters of misconduct should be dealt with informally to encourage the employee to learn from their mistakes and improve their conduct. Employees should be supported to meet the standards and expectations of the Academy/Trust.

## **2. Scope**

- 2.1. This policy applies to all employees of the Wellspring Academy Trust (the Trust) including those employed by Academies within the Trust with the exception of staff within their Probationary Period for whom conduct issues will be dealt with under the Probationary Policy.
- 2.2. This policy provides a structure for all employees to achieve and maintain high standards of conduct, to encourage improvement where necessary and to ensure fairness, equity and consistency in the management of employee issues to attain the required standard.
- 2.3. This policy is not contractual and does not form part of an employee's terms and conditions of employment.

## **3. Principles**

- 3.1. Underperformance and ill health issues will be dealt with under separate policies.
- 3.2. The policy will apply to conduct outside of the workplace, including but not limited to criminal charges, cautions or convictions where this may have a bearing on the employees' employment, or where this, in the judgement of the Line Manager, breaches good professional conduct.
- 3.3. No disciplinary action will be taken against an employee until the case has been investigated.
- 3.4. Audio/visual recordings of the proceedings are not acceptable at any stage of the disciplinary procedure and are not admissible within this process unless agreed as a reasonable adjustment for an employee with a disability.
- 3.5. To observe the rules of natural justice the same person should not conduct both the detailed investigation and any subsequent hearing, as per the Trusts terms of Reference for Hearings and Appeals.
- 3.6. No formal action will be taken with regard to an employee who is a recognised Trade Union Representative until (following agreement with the individual concerned) the circumstances of the case have been discussed with their Trade Union. If the individual does not wish their Trade Union Representative to be involved, the disciplinary process will continue.
- 3.7. Employees have the right to be accompanied at investigatory meeting(s)/hearing/appeal by their trade union representative or a work colleague. It is the employee's responsibility to make the necessary arrangements for representation. This right does not extend to family/friends or professionals such as solicitors and barristers.

- 3.8. It is recommended that the panel in any disciplinary hearing or appeal will be provided with HR advice in relation to determining the appropriate level of sanctioning.
- 3.9. All employees have the right of appeal against any formal disciplinary sanction.
- 3.10. All documentation relating to any disciplinary matters will remain confidential and will be retained on the employees personal file for the duration for which the disciplinary warning is live.

**4. Examples of Gross Misconduct/Misconduct**

4.1. The following table gives examples of the type of conduct which **may** lead to dismissal (gross misconduct) and the types of conduct which **may** lead to disciplinary action (misconduct). However, it should be noted that this is not an exhaustive list and that the level of penalty will be determined on an individual basis taking account of the severity, circumstances and mitigating evidence.

Behaviour	
General Conduct at Work	
Gross Misconduct	Misconduct
<ul style="list-style-type: none"> <li>• Physical violence or bullying.</li> <li>• Serious verbal abuse.</li> <li>• Incapacity brought on by alcohol, illegal drugs or misuse of prescription drugs.</li> <li>• Substantial abuse of position and power.</li> <li>• Serious breach of the Grievance Resolution Policy.</li> <li>• Unlawful discrimination or harassment.</li> <li>• Bringing the Trust/Academy into disrepute.</li> <li>• Serious breach of professional conduct.</li> <li>• Unauthorised absence from place of work.</li> <li>• Conduct outside the workplace, including but not limited to criminal charges, cautions or convictions.</li> <li>• Continued and repeated offenses of misconduct.</li> <li>• Unauthorised covert recording</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to comply with a reasonable request.</li> <li>• Abusive, objectionable or insulting behavior.</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 the Grievance Resolution Policy.</li> </ul>
Gross Misconduct	Misconduct
<ul style="list-style-type: none"> <li>• Theft, fraud or falsification of records.</li> <li>• Deliberate or serious damage to Academy/Trust property, facilities, equipment or products.</li> <li>• Deliberately accessing and circulating illegal, pornographic, offensive or obscene material</li> <li>• Serious breach of Conduct – placing Academy/Trust’s reputation into disrepute.</li> <li>• Serious breach of Child Protection/ Protection of Vulnerable Adult Procedures.</li> <li>• Cause loss, damage or injury through serious negligence.</li> <li>• Serious non-compliance.</li> <li>• Serious breach of the Computer/E-Safety policies.</li> <li>• Serious breach of Teachers Standards.</li> </ul>	<ul style="list-style-type: none"> <li>• Allowing visitors on the premises without authorisation.</li> <li>• Unauthorised distribution of written or electronic material.</li> <li>• Failure to return equipment provided by the Academy/Trust.</li> <li>• Deliberately accessing and storing illegal documents/information.</li> <li>• Negligence, carelessness or recklessness which could result in damage or misuse of Academy/Trust property, facilities, equipment or products.</li> <li>• Undertaking work in conflict with the Academy/</li> </ul>

<ul style="list-style-type: none"> <li>• Serious breach of professional codes of practice.</li> <li>• Serious breach of safeguarding including Safer Recruitment procedures.</li> <li>• Serious breach of student exam procedures (exam malpractice).</li> <li>• Misappropriation of the Trust/Academy's finances.</li> <li>• Failure to adhere to Keeping Children Safe in Education requirement.</li> <li>• Serious breach of trust.</li> <li>• Posting unacceptable information on social media bringing the Trust/ Academy into disrepute.</li> <li>• Serious breach of data protection/confidentiality.</li> </ul>	<p>Trust.</p> <ul style="list-style-type: none"> <li>• Breach of the Computer/E- Safety policies.</li> <li>• Breach of data protection/ confidentiality.</li> </ul>
<b>Health and Safety</b>	
Gross Misconduct	Misconduct
<ul style="list-style-type: none"> <li>• A serious breach of Health and Safety rules.</li> <li>• Failure to disclose a medical condition either on appointment or upon diagnosis which may affect ability to undertake duties of the post resulting in a serious incident.</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to observe Health and Safety requirements.</li> <li>• Neglect of safety standards.</li> <li>• Failure to wear essential protective equipment.</li> <li>• Failure to disclose a medical condition either on appointment or upon diagnosis which may affect ability to undertake the duties of the post.</li> </ul>
<b>Absence and Timekeeping</b>	
Gross Misconduct	Misconduct
<ul style="list-style-type: none"> <li>• Falsification of records in an attempt to defraud the Academy/Trust.</li> <li>• Abuse of the Academy/Trust's Managing Sickness Absence Policy.</li> <li>• Absence without authorisation.</li> </ul>	<ul style="list-style-type: none"> <li>• Regularly or persistently late for work.</li> <li>• Leaving early without permission</li> <li>• Failure to comply with Academy/Trust's Managing Sickness Absence Policy including non-attendance at OHU appointments.</li> </ul>

## 5. Safeguarding

- 5.1. Should it be determined the alleged conduct relates to safeguarding of children or vulnerable adults, advice should be sought directly (in line with Keeping Children Safe in Education 2016) from the Local Authority Designated Officer (LADO) or the Adult Safeguarding Designated Service Officer and/or the police.
- 5.2. The LADO and/or the police may deem it necessary to arrange for a multi-agency strategy meeting to be held before an investigation is undertaken. The meeting (or discussion) will determine the appropriate course of action. Reference must also be made to the Academy's Safeguarding Policy.

## 6. Alleged Criminal Offences

- 6.1. When the conduct of an employee is the subject of police enquiries or criminal charges and the alleged offence may affect, or is connected with the employee's work, where necessary either:

Immediately suspend the employee from duty and postpone disciplinary action until the outcome of police enquiries or legal proceedings are known.

OR

Initiate an investigation and proceed with disciplinary action if there is evidence of a clear breach of the Trusts procedures and/or professional standards, provided this would not prejudice police enquiries or legal proceedings.

## **7. Referrals**

- 7.1. Where an employee in a teaching role has been dismissed (or where the dismissal would have been the likely outcome had they not resigned before the disciplinary process was completed) they must be referred to the Teacher Regulation Agency (TRA). The TRA will consider the case and make the appropriate sanction, which may include being barred from teaching.
- 7.2. With regard to disciplinary action in relation to safeguarding, issues involving the risk of harm or actual harm to a child, employees (whether teachers or support employees) must be referred to the Disclosure and Barring Service (DBS) and additionally, in the case of teachers and appropriate support staff, to the TRA.

## **8. Raising a Grievance**

- 8.1. During the disciplinary process, the employee may raise a grievance. Where the grievance is related to the disciplinary case, it is appropriate that both matters are dealt with at the same time i.e. at one meeting. However, where there is a significant amount of evidence to be considered, it may be necessary to hold two separate meetings but ensuring that the same panel hears both the grievance and the disciplinary. It is advisable that another manager is allocated responsibility for investigating the grievance aspect of the case.
- 8.2. In instances where the grievance has no relationship to the disciplinary, then both procedures may run in parallel but heard as two separate hearings with different panels.

## **9. Sickness Absence**

- 9.1. If an employee becomes unfit for work during the disciplinary process, they should make every effort to attend management investigation meetings and hearings. It is recommended that the Investigating Officer refers the employee immediately to the Occupational Health Service to ascertain their fitness to participate in the disciplinary process. If the employee is deemed unfit to participate for a prolonged period (defined as 4 weeks or more) or if the employee fails to attend Occupational Health and are unable to confirm their fitness to participate in the process, disciplinary meetings may go ahead in their absence and a decision made on the basis of the available evidence. Each case will be judged on its own merits. If the employee is unable to attend, the employee can be asked to submit a response

in writing for consideration by the chair and/or their nominated representative may present their case on their behalf. If the employee is unhappy with the outcome of the disciplinary hearing they will have the opportunity to address this perceived inequality at a Disciplinary Appeal meeting.

- 9.2. It is recognised this can be a difficult time for the employee and all parties should be mindful that if matters are dealt with promptly, this could alleviate some stress felt by the employee during the process. A counselling support referral should be considered.

## **10. Initial Assessment**

10.1. When an initial allegation arises, preliminary enquiries should establish:

- The allegation of misconduct is unfounded, and no further action is required.
- The allegation of misconduct is minor and can be dealt with through informal action.
- That the existing evidence, by mutual agreement, can be presented at a hearing without the need for a detailed or separate formal investigation meeting. On these rare occasions, the employee must be informed of the details of the allegation(s) and the reason why the alleged conduct is deemed unacceptable prior to the hearing taking place.
- A formal investigatory meeting(s) into the allegation of misconduct is required.
- That the employee should be suspended from work and a formal investigation is required.
- The allegation is vexatious and malicious which could result in disciplinary action against the employee concerned.

## **11. Early Intervention/Informal Action**

11.1 An informal conversation between the Line Manager and the employee may suffice. This may be to determine whether there is any requirement for further training, mentoring or any other appropriate support.

11.2. A Management Instruction may be appropriate where there is reasonable belief that the evidence is sufficient but minor and the employees' behaviour warrants improvement. In such cases, following an informal conversation, a letter including agreed action points and the expected standards of behaviour should be issued and signed by both parties and placed on the employees' personal file for a period of 6 months, after which time it should be removed. There is no right of appeal.

11.3. The employee should be advised that if misconduct re-occurs, formal action may be instigated.

## **12. Suspension**

12.1. Before any suspension is undertaken, the Line Manager must consult with the HR Business Partner.

12.2. Suspension is not automatic, reasonable alternative options should be explored whilst an investigation takes place, such as a temporary transfer to alternate duties/location, providing the employee can be supervised.

- 12.3. In appropriate circumstances, established through a thorough assessment, the employee may be suspended without prejudice as a precautionary measure. Suspension should only be carried out when there is a potential for the employee to impede the investigation, the allegation is so serious that it may result in the employee being dismissed on the grounds of gross misconduct or if allowing the employee to remain at work would present too great a risk to students, other employees or themselves. Guidance for managers on suspension can be obtained by contacting the HR Business Partner.
- 12.4. Where a decision is taken to suspend, arrangements should be made for the employee (where possible) to be supported by a work colleague or a member of the Trade Union provided this does not unduly delay the suspension meeting.
- 12.5. The suspension will be on full pay whilst a formal investigation is undertaken.
- 12.6. If the employee falls sick whilst suspended, the normal sickness absence (including pay) arrangements will apply.
- 12.7. The reason(s) for suspension will be confirmed in writing (see template letters in Appendix 2). Suspension will be reviewed every two weeks, and the employee will be notified if there are any changes in the circumstances.
- 12.8. The period of suspension should be as brief as possible.

### **13. Formal Action and Investigation**

- 13.1. When an allegation of misconduct arises and it is inappropriate to be dealt with informally, or if the matter has already been dealt with informally without the required improvement (cumulative), formal action will be considered.
- 13.2. An Investigating Officer will be appointed to establish the facts.

### **14. Conducting an Investigation**

- 14.1. A member of the Trust's Executive or Senior Management Academy Team will determine who will undertake the role of Investigating Officer (IO). The IO will be of appropriate managerial level who has had no previous involvement in the matter and is not conflicted.
- 14.2. The IO will:
  - Ascertain the facts. This usually involves the holding (and documenting) of management investigatory meetings with the employee and where appropriate, witnesses. This includes the collation of formal witness statements.
  - Assess the facts, taking into consideration mitigating factors.
  - In cases where there is no requirement to proceed to a formal disciplinary hearing, communicate the outcome to the employee concerned.



- Determine whether the evidence gathered supports the allegations and there is a requirement to proceed to a disciplinary hearing.
  - Present the case at the hearing.
- 14.3. The employee will have the right to be accompanied as set out in the Principles (Section 3).
- 14.4. The employee will be given 5 working days' notice to attend the management investigation meeting (unless agreed otherwise). Every reasonable effort should be made by the employee and representative to be available for the meeting. If the employee's representative is unable to attend on the specified date, the employee may request that the meeting be postponed. Provided that the new date and/or time is reasonable, and within 5 working days of the original date this will be accommodated.
- 14.5. Relevant evidence will be disclosed during the investigation meeting and made available to the panel at any subsequent Disciplinary Hearing.

## **15. Disciplinary Hearing**

- 15.1. Where an employee is required to attend a Disciplinary Hearing, the following process must be followed:
- 15.2. The decision to progress to a Disciplinary Hearing will be confirmed in writing (Appendix 2) and must include:
- details of the allegation(s)
  - the potential outcome of the case
  - all evidence and documentation gathered during the investigation, including a summary of the Investigating Officers case
  - witness statement(s) (where relevant)
  - the date/time/location of the meeting, giving 10 working days' notice, unless a mutually agreeable earlier date can be agreed
  - the name(s) of the person(s) hearing the case
  - the employee's right to be accompanied
- 15.3. In some cases, the employee may wish to submit documentation for consideration by the panel. This should be provided no later than 5 working days prior to the date of the hearing. Where relevant, the employee must also confirm any witnesses they wish to call and in liaison with the IO, make arrangements for their attendance.
- 15.4. It is expected that all internal witnesses attend the meeting to be questioned. However, in some circumstances it may be impracticable or unacceptable for the witnesses to be present at the meeting. Where internal or external witnesses do not attend for whatever reason, it is for the panel to determine the weight placed on the evidence presented in the witness statement.

- 15.5. Should the employee not wish to attend the hearing, alternative arrangements will be considered by the panel such as, a request for their representative to attend on their behalf or the employee may wish to provide a written submission. The panel should be notified of this, at least 5 working days prior to the hearing.
- 15.6. Every reasonable effort should be made by the employee and representative to be available for the hearing. If the employee's representative is unable to attend on the specified date, the employee may request that the meeting be postponed. Provided that the new date and/or time is reasonable, and within 5 working days of the original date, this will be accommodated. Where no agreement can be reached the hearing date will be set by the IO.
- 15.7. Should the employee/their representative fail to attend without any reasonable explanation, the person hearing the case will make a decision whether to proceed in their absence.
- 15.8. The hearing will be conducted as detailed in Appendix 1.
- 15.9. Membership of panels will consist of between one and three members, depending on the specific circumstances. If the case is a potential dismissal, HR advice should be sought with reference to the composition of the panel.
- 15.10. The panel will comprise of members of the Trust's Executive and Senior Management Team who have had no previous involvement in the matter and are not conflicted (i.e. the CEO, Executive Principals, Principal, Executive Vice Principals, Heads of School or members of the Support Centre's Leadership Team).
- 15.11. In instances where a hearing relates to an Executive Principal, Principal, Executive Vice Principal or Head of School, the Hearing panel members should comprise of the relevant Local Governing Body (LGB) Chair or Vice Chair (or another LGB member appointed by the LGB Chair), along with up to two members of the Trusts Executive Management Team (i.e. the CEO, Executive Principals or members of the Support Centre's Leadership Team). The composition of the Panel will be agreed jointly between the LGB Chair and the Trust.
- 15.12. If an employee attends with a TU representative or work colleague, the chosen representative does not have the right to answer questions on the employees' behalf or address any meeting without the employees' consent. They will be allowed to address the panel and present the employees' case.

## **16. Outcome of the Disciplinary Hearing/ Appeal**

- 16.1. The possible outcomes of the Disciplinary Hearing are:

### **No Action**

No action is appropriate where there is reasonable belief the evidence is insufficient to confirm the misconduct allegations.

### **Management Instruction**

Please refer to section 11.2

### **Written Warning**

A written warning will be relevant in instances of minor acts of misconduct or where there has been repetition of the same action that has warranted previous informal action (cumulative).

The length of a written warning should be 6 months.

In extreme circumstances, the panel may conclude it appropriate to issue the sanction for a longer period of time. In these rare cases, a written warning should remain on file for no more than 12 months.

### **Final Written Warning**

A final written warning is relevant where there is a re-occurrence of misconduct or where misconduct is sufficiently serious but does not warrant dismissal.

The length of the final written warning should be 12 months.

In extreme circumstances, the panel may conclude it appropriate to issue the sanction for a longer period of time. In these rare cases, a final written warning for no more than 24 months.

### **Cumulative Dismissal**

Cumulative dismissal is relevant in circumstances whereby there has been a re-occurrence of misconduct, which has been subject to a written and/or final written warning, or misconduct has not improved following a final written warning, or the employee is subject to a final written warning and has committed a further act of misconduct. Following a further formal hearing the employee can be served notice based on their contract of employment.

### **Summary Dismissal**

Summary dismissal without notice is appropriate in instances of gross misconduct and/or where the reputation of the Trust/Academy will be severely compromised.

### **Recommendations**

In addition to any of the outcomes listed above, the panel may also conclude that it is necessary to make some recommendations. These should be recorded and passed to the most appropriate member of SLT/Management to take forward.

- 16.2. The employee will, when possible, be notified verbally of the outcome by the person that heard the case. The decision will also be confirmed in writing within 5 working days wherever possible, informing the employee of their right of appeal.
- 16.3. The written record of the hearing should be completed as quickly as possible after the date of the hearing.
- 16.4. Copies of disciplinary sanctions will be kept on the employee's personal file as a record of events/employment history but will be disregarded for disciplinary purposes after the stipulated timescale and destroyed, unless the case was of a safeguarding nature.

## **17. Right of Appeal**

- 17.1. Employees have the right of appeal against any sanction given as a result of a hearing within 10 working days from the date of their confirmation letter and (where appropriate) should provide supporting evidence (for example, if new evidence has come to light). The Appeal Form in Appendix 4 should be used for this purpose but a letter outlining the grounds for appeal is also acceptable.
- 17.2. Membership of all appeals Panels will consist of between one and three members, depending on the specific circumstances.
- 17.3. The Panel will be drawn from the Trust's Executive and Senior Management Team who have had no previous involvement in the matter and who are not conflicted (i.e. the CEO, Executive Principals, Executive Vice Principals, Heads of School or Members of the Support Centre's Leadership Team) and/or a member of the LGB with agreement of the LGB Chair.
- 17.4. In instances where an appeal hearing relates to an Executive Principal, Principal, Executive Vice Principal, or Head of School, the Panel will comprise of the relevant LGB Chair or Vice Chair (or another LGB member appointed by the LGB Chair), along with the CEO (or a person appointed to deputise for the CEO) and up to one member of the Trusts' Executive Management Team (i.e. the CEO, Executive Principals, or members of the Support Centre's Leadership Team). The composition of the Panel will be agreed jointly between the LGB Chair and the CEO.
- 17.5. The employee will be given 10 working days' notice of the Appeal Hearing and be informed of: -
  - The name(s) of the person(s) who will hear the case.
  - The date, time and location of the hearing.
  - The right to representation
  - A copy of the relevant policy.
- 17.6. The appeal will be conducted as a re-hearing, having regard to the matters set out on the Appeal Form and/or letter from the employee, and the outcome letter of the disciplinary hearing.
- 17.7. The person(s) hearing the appeal will receive the Appeal Form and/or letter, relevant documents referred to in the disciplinary hearing and a copy of the letter confirming the outcome of the disciplinary hearing.

- 17.8. At the appeal stage, either party may decide that it is relevant for witnesses to attend the meeting. In circumstances whereby it is impracticable or unacceptable for witnesses to attend, the person hearing the appeal will determine the weight placed on the evidence provided.
- 17.9. Every reasonable effort should be made by the employee and representative to be available for the appeal hearing. If the employees' representative is unable to attend on the specified date, the employee may request that the hearing be postponed. Provided that the new date and/or time is reasonable, and within 5 working days of the original date, this will be accommodated.
- 17.10. If following reasonable attempts to arrange a suitable date for all to attend and the employee/their representative is still unavailable, the person hearing the appeal may determine that the appeal is withdrawn.
- 17.11. The appeal should normally be conducted in one day except in exceptional circumstances.
- 17.12. If an employee attends with a TU representative or work colleague, the chosen representative does not have the right to answer questions on the employees' behalf or address any meeting without the employees' consent. They will be allowed to address the appeal panel and present the employees' case.
- 17.13. The process for the Appeal Hearing will be as outlined in the Process at a Formal Appeal Hearing (see Appendix 1).
- 17.14. The person(s) hearing the appeal has authority to confirm, reduce, or revoke the original outcome. The decision of the person(s) hearing the appeal is final.
- 17.15. Where possible the decision will be given to the employee at the conclusion of the meeting and confirmed in writing no more than 5 working days after the hearing.
- 17.16. The written record of the appeal hearing should be completed as quickly as possible after the date of the hearing.
- 17.17. All documents pertaining to this procedure should be retained on the employee's personal file as per point 3.10.

## **18. Monitoring and Review**

- 18.1. The policy will be monitored to ensure consistency of application and adherence to Equalities legislation.
- 18.2. The policy will be reviewed every three years.

**This policy has been consulted and agreed with the following Trade Unions: NEU, ASCL, Unison, GMB, Unite and NAHT. Consultation has taken place with NASUWT.**