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1. Scope

This disciplinary policy will apply to all teaching and support staff within the Lydiate Learning Trust, including the Executive Headteacher and individual academy Headteachers.

The disciplinary policy will be applied equitably.

2. Purpose

2.1 The trust board aims through this policy to encourage improvement in an individual's conduct. The policy also sets out the procedure which will be followed when disciplinary rules are breached.

2.2 The procedure is also designed to reflect the individual's right to natural justice and the rights identified in the Human Rights Act. The disciplinary procedure is separate and distinct from the grievance procedure. The grievance procedure shall not be used as a means of imposing any disciplinary penalty on the employee. If, however, the question of disciplinary proceedings arises as a result of a hearing of a grievance, it shall be dealt with in accordance with the procedure set out later in this document.

2.3 The aims of the policy are:

- to define the standards of behaviour expected of members of staff;
- to provide a fair procedure in the event that disciplinary action is necessary;
- to set out clearly the process by which staff disciplinary matters will be dealt with;
- to indicate the responsibilities of individual members of staff; and
- to set out the powers and responsibilities of the Trust board of Directors, Local Governing Bodies, Chief Executive Officer and the Academy Headteachers.

3. Principles:

3.1 All employees are required:

- to conduct themselves appropriately;
- to obey the reasonable directions of the employer;
- to be loyal to the employer;
- to take care over the work assigned to them; and
- to strive to maintain a good employment relationship.

3.2 Employees are expected to observe the reasonable rules, policies and procedures set out in the Staff Handbook. These cover amongst other things the trust boards rules on such issues as: absence procedure; timekeeping; standard of dress; health and safety; use of the academy's facilities and equipment; discrimination, bullying and harassment.

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3.3 The employer (in this case ‘the trust board’) is expected to show consideration to employees and to strive to maintain a good employment relationship.

3.4 The directors of this multi academy trust board will follow a fair and effective procedure in the event that disciplinary action might be necessary and will ensure the policy is applied equitably.

4. Definitions

4.1 Misconduct:

(a) Misconduct refers to behaviour which falls short of the standard expected of a registered teacher or member of the academy’s support staff, taking into account the trust’s rules and all relevant circumstances.

(b) In some cases a single act or omission may be considered to be unacceptable professional conduct in breach of the expected standards of propriety.

4.2 Gross Misconduct:

(a) Gross misconduct is regarded as misconduct serious enough to destroy the employment contract between the employer and the employee and to make any further working relationship and trust impossible.

(b) So serious is gross misconduct that the Headteacher may dismiss the employee without normal notice.

(c) **Some examples** of what the trust might consider to be gross misconduct are:

- Failure to comply with a reasonable order, instruction, contractual requirement or a work rule.
- Failure to comply with a health and safety requirement.
- Any act which could result in an action against the employer for negligence or for breach of the duty of care.
- Conduct likely to bring discredit to the employer’s business or organisation.
- Improper, disorderly or unacceptable conduct.

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- While claiming to be absent sick, working or indulging in activities which are likely to be inconsistent with the reason for absence and/or which are unlikely to aid recovery.
- Committing an act outside work, which is liable to adversely affect the performance of the contract of employment and/or the relationship between the employer and the employee.
- Misuse of the employer's facilities.
- Loss, damage to, or misuse of the employer's equipment and/or property, assets or funds through wilfulness, negligence or carelessness.
- Theft or misappropriation of, or failure to account for, or falsely claiming entitlement to, the employer's property, assets or funds.
- Fraud, providing false information orally or by the falsification of records or documents.
- Unauthorised alteration, mutilation or destruction of the employer's records or documents.
- Failure to observe any requirement of the employer's equal opportunities policy. Refer to the Equal Opportunities Policy Statement.
- Bullying or harassment, including sexual or racial harassment, of colleagues and/or service users.
- Failure to report or record any matter which it is the employee's duty to report or record.
- An act that contravenes the Safeguarding and Welfare of Children and Young People.

This list is neither exclusive nor exhaustive.

5. Relationship with Capability Procedures:

5.1 This procedure does not apply to incompetence or other poor performance unless this is attributable to misconduct. There are separate Capability Procedures.

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6. Responsibilities

6.1 Trust Board of Directors

- (a) The trust board of directors will:
- make and review the disciplinary policy;
 - will delegate to the Headteacher:
 - the power to arrange for investigation of alleged breaches of discipline;
 - the power to issue warnings were deemed necessary;
 - the duty to inform the Local Governing Body's Disciplinary Committee in the event that the Headteacher considers that the Committee should consider terminating the employee's employment at the academy (i.e. dismissal).
- (b) The Clerk to the Governing Body will be responsible for the arrangements for the Disciplinary Committee and/or the Disciplinary Appeals Committee in liaison with the academy.
- (c) When the person whose conduct is in question is the Headteacher, the Local Governing Body will appoint a Disciplinary Committee consisting of three governors to hear any disciplinary case and to determine if any sanction is necessary. Any appeal against this committee's decision will be heard by the Lydiate Learning Trust Appeals Committee, appointed by the Chair, consisting of three Directors or local governors (who took no part in the original disciplinary hearing).
- (d) When the person whose conduct is in question is the Executive Headteacher the trust board of directors will appoint a Disciplinary Committee consisting of three Directors to hear any disciplinary case and to determine if any sanction is necessary. Any appeal against this committee's decision will be heard by the Lydiate Learning Trust Appeal Committee, appointed by the Chair, consisting of three Directors or local governors (who took no part in the original disciplinary hearing.)
- (e) Decisions of the Appeals Committee are final.

6.2 The Executive Headteacher

The Executive Headteacher is responsible for advising the Headteachers on matters relating to this policy and seeking further specialist advice where necessary.

6.3 The Headteacher

- (a) The Headteacher is responsible for the fair and effective management of the policy. Where the Headteacher is to hear the disciplinary case, he/she should not take any

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part in the investigation and should appoint an investigating officer. In particular, the Headteacher is responsible for ensuring fair and proper investigation of the issues surrounding the alleged misconduct, and for deciding at which stage an employee's misconduct should be dealt with.

- (b) Where the Headteacher formally hears the disciplinary case he/she may decide that:
- no action is necessary
- OR** to issue:
- an informal oral warning;
 - a formal oral warning
 - a first formal written warning; or
 - a final formal written warning;
- (c) In the cases of misconduct as defined in paragraph 4.1 sub paragraph b, or in cases of gross misconduct, or following a current final formal written warning already held on the employees file, the Headteacher may
- refer the matter to the local governors' Disciplinary Committee to formally hear the disciplinary case.
- (d) The Headteacher will inform the employee that an investigation into their alleged misconduct is being undertaken. An invitation to a preliminary interview should be made in writing.

6.3 Investigating Officer

- (a) In appropriate cases the Headteacher (or local governing body) may appoint an 'Investigating Officer' to investigate the matter and to advise the Headteacher (or governing body Disciplinary Committee). The Investigating Officer may be a senior member of staff who has not been connected in any way with the alleged misconduct. In exceptional circumstances an external investigator may be appointed as the investigating officer.
- (b) The Investigating Officer must approach the task with professionalism and objectivity, and must recognise that everyone associated with the case are likely to be anxious and distressed. The Investigating Officer will not discuss, or share any information about, the issue other than as provided within the procedure and his/her brief. The Investigating Officer is expected to seek legal and professional advice from the Human Resource team.

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6.3.1 Allegations made against the Headteacher

- (a) Where allegations of misconduct are made against the Headteacher, the Chair of the Local Governing Body will become the Investigating Officer or commission an Investigating Officer in consultation with the Human Resource advisors.
- (b) The Investigating officer will undertake the full investigation of the allegations and, if appropriate, present the case before a disciplinary committee.
- (c) The Chair of Governors, as Investigating Officer will not be able to be a member of the Disciplinary nor Appeals Committee. Alternatively, the Chair may wish to consider inviting an external investigator to undertake the disciplinary investigation and to present the case on his/her behalf.
- (d) The Chair of Governors will inform the Headteacher that an investigation into their alleged misconduct is being undertaken.

6.3.2 Allegations made against the Executive Headteacher

- (a) Where allegations of misconduct are made against the Executive Headteacher, the Chair of the Trust Board of Directors will become the Investigating Officer or commission an Investigating Officer in consultation with the Human Resource advisors.
- (b) The Investigating officer will undertake the full investigation of the allegations and, if appropriate, present the case before a disciplinary committee.
- (c) The Chair of the Trust Board, as Investigating Officer will not be able to be a member of the Disciplinary nor Appeals Committee. Alternatively, the Chair may wish to consider inviting an external investigator to undertake the disciplinary investigation and to present the case on his/her behalf.
- (d) The Chair of Governors will inform the Executive Headteacher that an investigation into their alleged misconduct is being undertaken.

7. Criminal Proceedings

- 7.1 Where a member of staff is charged with a criminal offence connected with his / her employment, the governing body may take disciplinary action against him / her in accordance with this policy. Such action would be completely independent of any investigations being made by the Police. Disciplinary investigation may be delayed to avoid compromising any police investigation.

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7.2 Where a member of staff is charged with a criminal offence outside his / her employment and the nature of the allegation may have a consequence upon the individual's contract, the employee will be suspended on full pay and no further disciplinary action will be taken until circumstances are more clearly known. A conviction, or a plea which will lead to conviction, would be considered against the job and responsibility of the post holder and could, in some circumstances, be construed as gross misconduct.

7.3 In the event that the employee is remanded in custody until trial, pay will be suspended but set aside to be paid at a later date, in the case of innocence.

8. Confidentiality

8.1 In order to preserve the rules of the natural justice for the employee concerned, the Headteacher and Local Governors must ensure that matters relating to the allegations are not discussed prior to any formal hearing which may take place.

9. The Procedure

9.1 It is the aim of the trust board to ensure that the requirements of natural justice are borne in mind. Disciplinary action will not be taken until the issue has been investigated.

10. Informal Procedure

10.1 Cases of minor misconduct will normally be dealt with informally by a line manager. Wherever possible a minor disciplinary issue should be dealt with through counselling. This might involve giving strong advice on how the employee's conduct could be improved. If an informal oral warning is deemed to be necessary by the line manager the line manager will immediately inform the Headteacher that an oral warning has been issued and the nature of the misconduct.

10.2 It is the Headteacher's responsibility to determine at which point formal disciplinary action should be taken. The Headteacher must ensure that there is no confusion as to when formal procedures are being initiated.

10.3 In some circumstances it may be more appropriate to issue the employee with a management letter. This letter should clearly set out the standards of behaviour expected and any potential future consequences of failing to observe these standards. It is not a disciplinary sanction.

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11. Formal Disciplinary Procedures

11.1 Precautionary Suspension

- (a) The Headteacher/Chair of the Local Governing Body (when in relation to the Headteacher)/Chair of the Trust Board (when in relation to the Executive Headteacher) has the power to suspend a member of staff (on full pay) as a precautionary measure on disciplinary grounds, where the issue that is subject to disciplinary action is considered by the Headteacher/Chair of the governing body/Chair of the Trust Board to involve gross misconduct, or it is in the interests of the trust/academy, or a pupil, or an employee, or the member of staff facing the allegations.
- (b) A precautionary suspension is a neutral act and does not constitute a disciplinary sanction and is without prejudice.
- (c) The Headteacher/Chair of the Local Governing Body/Chair of the Trust Board may suspend an employee from work, in accordance with paragraphs 11.1(a) and (b) on full pay and benefits whilst an investigation takes place.
- (d) In taking a decision to suspend an employee the Headteacher/Chair of the Local Governing/Chair of the Trust Board must consider the nature of the allegations and to whom they may apply. It may be appropriate to suspend other employees who may be associated with the alleged misconduct.
- (e) If suspension is being considered, a meeting will be convened with the employee. The employee may seek representation from a Trade Union representative or academy colleague. The employee will be allowed one hour (and no more than a maximum of three hours in exceptional circumstances) to find a representative. Failure to find representation will not stop the meeting and any decision to suspend. The employee will be told of the allegation(s) made against him/her and offered an opportunity to make a statement.
- (f) If the decision to suspend is made the employee will be informed when he/she must leave work premises. The employee must be available for contact throughout the period of suspension. A single employee will be appointed as the employee's point of contact with the academy during the period of suspension. All property belonging to the employer must be returned during the period of suspension, e.g. laptops, ICT equipment, keys to buildings. Access to the academy's Internet and E-mail facilities will be suspended along with any other systems the employee has access.

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- (g) The Headteacher/Chair of the Local Governing Body/Chair of the Trust Board will seek advice from the HR Team, before making a decision to suspend, and will inform the HR Team when a suspension has been made.
- (h) Suspension will be reviewed at reasonable intervals by the Headteacher/Chair of the Local Governing Body/Chair of the Trust Board to ensure that it is not unnecessarily protracted.

12. The Investigation Stage

12.1 All disciplinary issues will be properly investigated as a first step. The Headteacher/Chair of the Local Governing Body/Chair of the Trust Board will appoint an appropriate Investigating Officer. The Headteacher/Chair of the Local Governing Body/Chair of the Trust Board may seek advice from the HR Team before making the appointment.

- Where the facts are undisputed the Investigating Officer must ensure that the employee is satisfied that no further investigation is called for.
- The Investigating Officer will make his/her recommendation to the Headteacher/Chair of the Local Governing Body/Chair of the Trust Board, normally within five working days of completion of the investigation, of whether or not the matter should proceed to a formal hearing.
- Any witness statements must be dated and signed and attached to the Investigating Officer's report.
- The details of the investigation should remain confidential and not be disclosed to any party who may be involved in any subsequent disciplinary hearing.

12.2 If after the investigation it appears that there are no reasonable grounds for continuing with the procedure, the person(s) concerned will be informed, and, if has remained suspended, allowed to return to work as normal.

12.3 The Notification

If it is determined that there are grounds for disciplinary action the Headteacher/Clerk to the Board and Governors will write to the employee requesting their attendance at a disciplinary hearing, the letter will set out the grounds for the action and the potential consequences and will provide the employee with at least 10 working days' notice of the hearing. This time constraint may be shortened at the employee's request where the employer can

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accommodate it. The employee's request must be made in writing to the Headteacher/Clerk to the Board/Governors.

The letter will remind the employee concerned of their rights at the formal hearing:
to representation*,
to state their case, and
to appeal against any decision taken.

In any cases of alleged gross misconduct the letter must state that the outcome may result in dismissal.

**The employee has the right to make a reasonable request to be accompanied by a work colleague or a trade union official of their choice at the disciplinary hearing. It will not be considered reasonable if the representative might prejudice the action, or might have a conflict of interest. Should the employer consider this to be the case, the employer will contact the Trade Union office.*

- (b) If the representative cannot attend on the date set, another date can be proposed by the employee, so long as this is reasonable and is not more than five working days after the original date set by the Headteacher/Clerk to the Trust Board/Governors.
- (c) If the employee is unable to attend the meeting through unforeseen circumstances outside the employee's control, the hearing will be rearranged. If the employee is unable to attend the hearing due to sickness this must be covered by a GP's certificate. If the employee fails to attend without good reason, then the hearing may be held in his/her absence.

12.4 The Hearing:

- (a) Any disciplinary hearing will be conducted by the Headteacher at the warning stages unless the Headteacher has carried out or been involved in the investigation, or will be attending as a witness.
- (b) The hearing will be conducted by the Chair of the Governors'/Trust Board Disciplinary Committee accompanied by two other governors. The Headteacher may not be a member of this Committee. He/she may appear as the Investigating Officer to present the academy's case or as a witness.

12.5 Documentation for formal disciplinary hearings.

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- (a) To the employee

All documentation for the academy's case must be supplied to the employee no later than 10 working days prior to the hearing.

- (b) To the employer

All documentation for the employee's case must be supplied to the academy no later than 5 working days prior to the hearing.

12.6 Witnesses

- (a) Where there is a request to preserve the anonymity of a witness the HR Team should be consulted before any **decision is made**.
- (b) Either side may introduce witnesses to the hearing, but must notify the other side within the time limits set out in paragraph 12.5.

12.7 Conduct of the Meeting

- (a) The Investigating Officer will present the Academy's Case and call any witnesses.

The employee (or representative) will then respond to the allegations and present his/her defence and call any witnesses.

Each party has the opportunity to question each other and witnesses.

The Disciplinary Committee will have the opportunity to question all parties.

- (d) The Investigating Officer and the employee (or representative) will sum up their case in turn.

12.8 Adjournment during the hearing.

- (a) The Disciplinary Committee may adjourn the proceedings at any stage if this appears necessary or desirable. If the adjournment is for the purpose of enabling further information to be obtained the Disciplinary Committee will specify the nature of that information.
- (b) Both parties may request an adjournment for a specific reason at any time.

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- (c) Any adjournment will normally be for a specified time.

12.9 Grievance

If a grievance is raised during the course of the hearing the Disciplinary Committee must decide whether the procedure shall be suspended for a specified period while the grievance is dealt with. In coming to a decision the Disciplinary Committee may seek advice from the HR Team.

12.10 Decision-Making

On completion of the hearing the Disciplinary Committee will adjourn to consider the evidence and reach a decision. The Disciplinary Committee is entitled to be advised by the appropriate advisors to the Lydiate Learning Trust. No other parties will take part in the decision making process.

12.11 Communication of the Decision

- (a) The Disciplinary Committee will deliver the decision to the employee as soon as practical. The decision must be confirmed in writing to the employee no later than 5 working days following the hearing. The employee will be informed of the action to be taken in relation to the individual who is subject to these proceedings, together with an explanation of the penalty to be imposed, and the right of appeal to the Governors' Appeal Panel.

If a decision has been taken to dismiss the employee/ determine that the employees contract should be terminated on disciplinary grounds he/she will be informed of the reasons for the dismissal, the date on which the termination of the contract will take place, the appropriate period of notice* (or pay in lieu of notice) as well as the notification of the right of appeal.

**In cases of summary dismissal termination of the contract will take place immediately without any notice period.*

12.12 Sanctions

- (a) Depending on the nature of any misconduct found to have been committed and any mitigating circumstances, the Disciplinary Committee may impose any of the following sanctions:
- no sanction;

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- an informal oral warning;
 - a formal oral warning;
 - a formal written warning;
 - a final written warning; or
 - dismissal/summary dismissal
- (b) An employee's contract of employment will not be terminated for a first offence unless the misconduct is gross misconduct.
- (c) The sanctions can be applied progressively starting with an oral warning, or the Disciplinary Committee may choose to give a written or final warning for a first or subsequent offence.

12.13 Currency of Warnings

An informal oral warning will not be recorded.

A formal oral warning will be recorded and remain on file for 6 months from the date given.

A formal written warning will be recorded and remain on file for 12 months from the date given.

A final written warning will be recorded and remain on file for 24 months from the date given.

13. The Appeal

13.1 Right of Appeal:

- (a) The employee may appeal against any disciplinary decision to the relevant Appeal Committee. The appeal should be submitted in writing to the Clerk to the Governing Body/Trust Board within ten working days of being notified of the Headteacher's/Committee's decision. The employee must give full details of the reason for the appeal.

13.2 Appeal Procedure:

The established Appeals Committee will not include the Headteacher, nor the investigating officer, nor any member of the original Disciplinary Committee, nor anyone who has an interest in the issues.

The Clerk to the Governing Body/Trust Board will arrange a hearing as soon as reasonably practicable, and normally within twenty-eight working days from the receipt of the written appeal.

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The procedure for the appeal hearing will be the same as that for the first disciplinary hearing, save that there will be no right of appeal from the decision of the appeal Committee.

The Clerk to the Governing Body/Trust Board will write to the employee and his/her representative confirming the arrangements for the appeal hearing, requesting details of the witnesses he/she intends to call and stipulating that any statement of case/documents that are to be submitted (by either side), must be received by the Clerk to the Governing Body, at least 10 working days before the hearing.

The Appeal Committee may decide to:-

- uphold the original decision.
- uphold the appeal and withdraw the original sanction issued.
- issue a disciplinary sanction at a lower level than the original.

The Appeal Committee may not increase the sanction awarded by the Headteacher/Disciplinary Committee.

A detailed minute of the meeting will be taken on behalf of the Committee by the clerk to the Committee who has no other role to play in the proceedings.

14. Equal Opportunities.

14.1 In all the procedures all parties must take into account the trusts' equal opportunities policy and to ensure that there is no discrimination on the grounds of sex, race, disability, sexual orientation, religion and belief, nor age.

15. Monitoring and Review.

15.1 The Headteacher or Clerk to the Governing Body/Trust Board, as appropriate, will inform the local governing body when any formal disciplinary action has been taken but without giving any details.

The Trust Board will review the policy at regular intervals

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