

The Pears Family School

(Keeping a child's mind in mind)

DISCIPLINARY POLICY

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Head Teacher	Matthew Hillman
Head Teacher Signature	
Named Governor	John Cape (Chair)
Named Governor Signature	

At the heart of all policies at The Pears Family School are the following principles:

- Every young person in our school, whatever his or her personal circumstances can learn and achieve
- Every young person in our school, whatever his or her self-perception and previous experiences, has academic and creative potential to become a valuable member of society
- The key to learning at The Pears Family School lies within the quality of the relationships between pupils, family members, staff and the intermediate agencies with whom we work
- The success of our school is based on high expectations, mutual trust, caring for each other and taking responsibility
- Every young person in our school is capable of becoming an agent for change in his or her local community
- Under the Equality Act 2010 we have a duty not to discriminate against people on the basis of their age, disability, gender, gender identity, pregnancy or maternity, race, religion or belief and sexual orientation
- We have carefully considered the impact of this policy on equality and the possible implications for pupils with protected characteristics, as part of our commitment to meet the Public Sector Equality Duty (PSED) requirement to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations

Our vision is to provide our pupils with the confidence, academic progress, and ambition to take the next steps towards a successful and productive life and to be able to contribute positively within their local community and wider society.

DISCIPLINARY POLICY

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1. POLICY STATEMENT

- The aims of this Disciplinary Procedure are to set out the standards of conduct expected of all staff employed by The Pears Family School and to provide a framework within which managers can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary.

- This procedure is not primarily a means of imposing sanctions, but should be used to help employees fulfil their duties and responsibilities to a satisfactory level. In this respect it is important to distinguish conduct from capability in order that the latter is addressed under the school's Capability Procedure.

- It is our policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond before taking any formal action.

This procedure does not form part of any employee's contract of employment and it may be amended, by The Pears Family School at any time. We may also vary this procedure, including any time limits, as appropriate in any case.

This policy and procedure is written to meet the ACAS Code of Practice and takes account of the Employment Act 2008, the Equality Act 2010 and all other relevant employment legislation.

2. WHO IS COVERED BY THE PROCEDURE?

The procedure applies to all employees regardless of length of service. It does not apply to agency workers or self-employed contractors or to the termination of employment for which an employee has been specifically engaged i.e. a fixed term contract; in the event of redundancy; or where employees subject to a probationary period do not reach required standards of performance during that period.

3. WHAT IS COVERED BY THE PROCEDURE?

- This procedure is used to deal with misconduct. It does not apply to cases involving genuine sickness absence, or poor performance. In those cases reference should be made to the appropriate policy or procedure.

- Minor conduct issues can often be resolved informally between the employee and their line manager. These discussions should be held in private and without undue delay whenever there is cause for concern. Where appropriate, a note of any such informal discussions may be placed on your personnel file but will be ignored for the purposes of any future disciplinary hearings. In some cases an informal verbal warning may be given, which will not form part of your disciplinary records. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).

- You will not normally be dismissed for a first act of misconduct, unless we decide it amounts to gross misconduct or you have not yet completed your probationary period.

- If you have difficulty at any stage of the procedure because of a disability, you should discuss the situation with the school's HR adviser as soon as possible.

4. CONFIDENTIALITY

- Our aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.
- The employee, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.
- The employee will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against them, unless we believe that a witness's identity should remain confidential.

5. AUTHORITY TO ACT

Authority to act is as set out below. The Headteacher of the school or a delegated Senior Leader will ensure that all employees are made aware of Leaders authorised to act within the framework.

Stage	Level of Sanction	Authorised Officer	Appeal to
1	First Written Warning	Delegated Senior Leader	Delegated governors
2	Final Written Warning	Delegated Senior Leader	Delegated governors
3	Dismissal	Principal / Governing Body Committee	Governing Body Appeal Committee

6. INVESTIGATIONS

- The purpose of an investigation is for us to establish a fair and balanced view of the facts relating to any disciplinary allegations before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and any witnesses, and/or reviewing relevant documents. An Investigating Officer will be appointed by the Headteacher to carry out the investigation, unless the process concerns the Headteacher, in which case the appointment will be made by the Chair of Governors,. The Investigating Officer will ordinarily be a member of the Senior Leadership Team or a governor if the matter concerns the Headteacher. The appointed investigating officer will not sit on any decision making panel.
- Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.
- The employee does not normally have the right to bring a companion to an investigative interview. However, we may allow you to bring a companion if it helps you to overcome any disability, or any difficulty in understanding English.

- You must co-operate fully and promptly in any investigation. This will include informing us of the names of any relevant witnesses, disclosing any relevant documents to us and attending investigative interviews if required.
- No investigation will take place without the employee concerned first being informed in writing of the nature of the complaint against them and given the opportunity to respond. In the case of Child Protection issues the CP procedure will override this disciplinary procedure and a member of the Senior Leadership Team will contact Social Services and the Children's Services Child Protection Officer in the first instance in order to determine how to proceed.

7. CRIMINAL CHARGES

- Where the employee's conduct is the subject of a criminal investigation, charge or conviction we will investigate the facts before deciding whether to take formal disciplinary action.
- We will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where the employee is unable or has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, we may have to take a decision based on the available evidence.
- A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if we consider that it is relevant to the individual's employment.

8. SUSPENSION

- In some circumstances we may need to suspend an employee from work. The Headteacher has the authority to suspend an employee, on full pay and without prejudice, pending an investigation, after consulting the Chair of Governors. The suspension will be for no longer than is necessary to investigate the allegations and we will confirm the arrangements in writing. While suspended an employee should not visit our premises or contact any of our pupils, parents, suppliers, contractors or staff, unless authorised to do so by the Headteacher, or their nominated officer, unless the process involves the Headteacher, in which case the Chair of the Governing Body, or their nominated officer. Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. The employee will continue to receive normal basic salary and contractual benefits during the period of suspension (for example sick pay).
- The employee will be given the name of an independent person who will provide personal and confidential support during the period of suspension.

9. NOTIFICATION OF A HEARING

- Following any investigation, if we consider there are grounds for disciplinary action, the employee will be required to attend a disciplinary hearing. We will inform the employee in writing of the allegations made against them, the basis for those allegations, and what the likely range of consequences will be if we decide after the hearing that the allegations are true. We will also include the following where appropriate:
 - a summary of relevant information gathered during the investigation;
 - a copy of any relevant documents which will be used at the disciplinary hearing; and

- a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case we will give as much information as possible while maintaining confidentiality.

We will give written notice of the date, time and place of the disciplinary hearing. The hearing will be held as soon as reasonably practicable, and should be within 20 working days subject to the availability of all relevant parties and documentation. The employee will be given at least 10 working days notice of the hearing. The employee must provide the panel with hard copies of any written documentation they intend to present in support of their case and confirmation of the names of any witnesses they intend to call at least 5 working days prior to the date of the hearing.

The employee should be advised of any witnesses who will be attending for the respondent and asked to advise the chair of any witnesses they wish to attend in order that appropriate arrangements can be made.

10. THE RIGHT TO BE ACCOMPANIED

- The employee may bring a companion to any disciplinary hearing or appeal hearing under this procedure. The companion may be either a trade union representative or a work colleague. The employee must tell the Investigating Officer who the companion is, in good time before the hearing.

- A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

- If the choice of companion is unreasonable we may ask the employee to choose someone else, for example:

- if in our opinion the companion may have a conflict of interest or may prejudice the meeting; or

- if the companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards.

- We may, at our discretion, allow an employee to bring a companion who is not a colleague or union representative (for example, a member of their family) if this will help overcome a disability, or if they have difficulty understanding English.

11. PROCEDURE AT DISCIPLINARY HEARINGS

- If the employee or their companion cannot attend the hearing they should inform us immediately and we will arrange an alternative time. The employee must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If the employee fails to attend without good reason, or are persistently unable to do so (for example for health reasons), we may have to take a decision based on the available evidence.

- The hearing will be chaired by the Headteacher, panel of governors or a Senior Leader if the allegation is not one of gross misconduct. If the matter involves the Headteacher, or if the Headteacher has been involved in the investigation, the Investigating Officer will be present and other representatives from the school may also be present. The employee may bring a companion to the disciplinary hearing (see section 10).

- At the disciplinary hearing we will go through the allegations and the evidence that has been gathered. The employee will be able to respond and present any evidence of their own. The companion may make representations to us and ask questions, but should not answer questions on behalf of the employee. The employee and their companion may confer privately at any time during the hearing.
- The employee may ask for relevant witnesses to appear at the hearing, provided we are given sufficient advance notice to arrange their attendance. The employee will be given the opportunity to respond to any information given by a witness. However, they will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, we decide that a fair hearing could not be otherwise held.
- We may adjourn the disciplinary hearing if we need to carry out any further investigations such as re-interviewing witnesses in the light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- We will inform the employee in writing of our decision and our reasons for it, usually within one week of the disciplinary hearing. Where possible we will also explain this information in person.
- The attached schedule 3 outlines a proposed order for the disciplinary hearing.

12. **DISCIPLINARY PENALTIES**

- The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. We aim to treat all employees fairly and consistently, and a penalty imposed on another employee for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.
- **Stage 1 - First Written Warning.**
- A first written warning may be authorised by the Headteacher or their nominated representative, unless the process concerns the Headteacher, in which case it will be authorised by the Chair of Governors, or their nominated representative. It will usually be appropriate for a first act of misconduct where there are no other active written warnings on the employee's disciplinary record.
- **Stage 2 - Final Written Warning.**
- A final written warning may be authorised by the Headteacher or their nominated representative, unless the process concerns the Headteacher, in which case it will be authorised by the Chair of Governors, or their nominated representative. It will usually be appropriate for:
 - misconduct where there is already an active written warning on record; or
 - misconduct that we consider sufficiently serious to warrant a final written warning even though there are no other active warnings on record.
- **Stage 3 - Dismissal.**

- Dismissal may be authorised by the Headteacher or their nominated representative, unless the process concerns the Headteacher, in which case it will be authorised by the Chair of Governors, or their nominated representative. It will usually only be appropriate for:

- any misconduct during the employee's probationary period;
- further misconduct where there is an active final written warning on record; or
- any gross misconduct regardless of whether there are active warnings on record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal). A non-exhaustive list of examples of gross misconduct are set out in Schedule 1.

- **Alternatives to Dismissal.**

- In some cases we may at our discretion consider alternatives to dismissal. These may be authorised by the Headteacher or their nominated representative, unless the process concerns the Headteacher, in which case it will be authorised by the Chair of Governors, or their nominated representative, and will usually be accompanied by a final written warning. Examples include:

- Demotion.
- Transfer to another department or job.
- A period of suspension without pay.
- Loss of seniority.
- Reduction in pay.
- Loss of a future pay increment or bonus.
- Loss of overtime.

13. THE EFFECT OF A WARNING

- Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct during that active period.

- A first written warning will usually remain active for six months and a final written warning will usually remain active for twenty four months. In exceptional cases verging on gross misconduct, a final written warning may state that it will remain active indefinitely. The employee's conduct may be reviewed at the end of a warning's active period and if it has not improved sufficiently we may decide to extend the active period.

- After the active period, the warning will remain permanently on the employees personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

14. BURDEN OF PROOF/BALANCE OF PROBABILITIES

In determining the action to be taken against an employee, it should be understood that a disciplinary hearing is not expected to establish whether the allegation has been proven *beyond reasonable doubt*, but rather whether, having regard to the allegations made and the facts established during the investigation, there is sufficient reason to believe that the offence has been committed and warrants disciplinary action.

15. APPEALS AGAINST DISCIPLINARY ACTION

If an employee feels that disciplinary action taken against them is wrong or unjust they should appeal in writing, stating the full grounds of appeal, to the person detailed in the outcome letter within 5 calendar days of the date on which they were informed of the decision.

Any appeal should clearly state what the claimant is appealing against. The grounds for appeal will need to fall into one of the following categories:

- that the process of the investigation was unfair;
- that the conduct of the hearing did not follow the agreed procedure;
- that the decision of the hearing did not consider all the facts and/or essential information was ignored;
- the outcome is unfair in relation to the finding.

- If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful the employee will be reinstated with no loss of continuity or pay.

- If the employee raises any new matters in the appeal, we may need to carry out further investigation. If any new information comes to light we will provide a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing.

- We will give written notice of the date, time and place of the appeal hearing. This will normally be five to seven days after receipt of the written notice.

- Where possible, the appeal hearing will be conducted impartially by a senior manager, Head Teacher or panel of governors who has/have not been previously involved in the case. The Investigating Officer and the Chair who conducted the disciplinary hearing will also usually be present and there may also be other representatives from the school present. The employee may bring a companion to the appeal hearing (see section 10).

- We may adjourn the appeal hearing if we need to carry out any further investigations in the light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

- Following the appeal hearing we may:

- confirm the original decision;
- revoke the original decision; or
- substitute a different penalty.

- We will inform the employee in writing of our final decision as soon as possible, usually within one week of the appeal hearing. Where possible we will also explain this decision in person. There will be no further right of appeal.

● **Schedule 1**

● **A. Examples of Misconduct**

The following are examples of matters that will normally be regarded as misconduct and will be dealt with under our Disciplinary Procedure.

1. Minor breaches of our policies including the Sickness Absence Policy, Electronic Information and Communications Systems Policy, and Health and Safety Policy.
2. Minor breaches of contract.
3. Damage to, or unauthorised use of, our property.
4. Poor timekeeping.
5. Time wasting.
6. Unauthorised absence from work.
7. Refusal to follow instructions.
8. Excessive use of our telephones for personal calls.
9. Excessive personal e-mail or internet usage.
10. Obscene language or other offensive behaviour.
11. Negligence in the performance of your duties.
12. Smoking in no-smoking areas.

This list is intended as a guide and is not exhaustive.

● **B. Examples of Gross Misconduct**

The following are examples of matters that will normally be regarded as Gross misconduct and will be dealt with under our Disciplinary Procedure.

- 1) Any action which results in a referral to the Independent Safeguarding Authority for consideration of the employee's inclusion on the Children's Barred List.
- 2) Breaching standards of professional conduct.
- 3) Theft, misappropriation, serious misuse or malicious damage to the school's or another employee's property.
- 4) Acceptance of bribes or other secret payments.
- 5) Unauthorised use of the school property.
- 6) Misuse, or the unauthorised use, of the school premises.
- 7) Fraud, deceit, or deception including, but not restricted to:
 - i) falsification of, or aiding and abetting the falsification of, any of the school's records, including, subsistence and expenses claims, and timesheets;
 - ii) giving false information as to qualifications or entitlement to work (including immigration status).
- 8) Actual or threatened violent, offensive or other intimidating conduct.
- 9) Harassment of any employee, parent, carer or student of the school.
- 10) Discrimination against any employee, parent, carer or student of the school on the grounds of age, gender, sexual orientation, marital or civil partner status, gender reassignment, race, colour, nationality, ethnic or national origin, religion or belief or disability.
- 11) The use of alcohol or drugs while at work. Excepted are drugs to treat a recognised medical condition, which do not diminish the competence, capability or capacity of the employee, and which are prescribed by a medical practitioner who is licensed by the British Medical Association. The quantity of the drugs taken, and the frequency of their use must comply with the advice provided by the licensed medical practitioner for this exception to apply.
- 12) Possession use or supply, or attempted supply of illegal drugs.

- 13) Conduct that constitutes a criminal offence, whether committed on the school premises or elsewhere.
- 14) Inappropriate use of the internet, telephone or email, including, but not restricted to access to deliberately accessing pornographic, offensive or obscene material.
- 15) Inappropriate use of Social Networking sites that results, for example, in bringing the school, pupils or staff into disrepute.
- 16) Acts or omissions likely to cause injury or otherwise impair the health and safety of the employee or others whilst on the business, or at the premises of the school.
- 17) Serious negligence leading to loss, damage or injury.
- 18) Acts or omissions likely to lead to a breach of confidentiality.
- 19) Involvement in private activities which in the opinion of the school place the employee's interests in conflict with those of the School.
- 20) Involvement in additional employment which in the opinion of the governors place the employee's interests in conflict with those of the school. Employees should consult the Headteacher prior to accepting additional employment, if in doubt.
- 21) Involvement in any activities which could weaken public confidence in the school.
- 22) Serious insubordination, including the failure to comply with a reasonable instruction given by, or with the authority of a more senior person.
- 23) Misconduct so incompatible with the employee's duties and responsibilities that their continued presence within the organisation is insupportable.
- 24) A serious breach of the school's policy or procedures.
- 25) Bringing the school into disrepute.
- 26) Knowingly taking parental, paternity or adoption leave when not eligible to do so or for a purpose other than supporting a child.
- 27) Making a disclosure of false or misleading information under Whistleblowing provisions maliciously, for personal gain, or otherwise in bad faith.
- 28) Making untrue allegations in bad faith against a colleague.
- 29) Victimising a colleague who has raised concerns, made a complaint or given evidence information under Whistleblowing provisions, Anti-harassment and Bullying Policy, Grievance Procedure, Disciplinary Procedure or otherwise.

- This list is a guide and is not exhaustive.

Schedule Two

CONDUCTING INVESTIGATIONS

The person conducting the investigation will explore thoroughly the facts of the matter included by interviewing witnesses where appropriate. (The investigating officer will not be eligible to sit on any decision making panel).

The investigation should be carried out as thoroughly and swiftly as possible.

Any witnesses to alleged offences should be asked to make written statements and to sign and date their statements. Any witness must be informed that they may be asked to attend a disciplinary hearing to act as a witness. Witnesses may bring along a colleague or trade union official to any meeting or subsequent hearing.

Written statements may be obtained from juveniles, but in such instances the investigator should give consideration to informing parents / guardians and giving them the opportunity to be present. Juvenile witnesses should be kept separate from each other before the interview and be interviewed independently.

The employee wherever possible will be interviewed and may bring along a colleague or trade union official. The employee will be asked to sign and date a written record of the meeting. Any points of disagreement will be noted in writing and kept with the record of the investigation. The employee may also produce a written statement which is signed and dated.

Interviews may take place over more than a single session but must be carried out within a reasonable timescale.

If a case has been referred from the Harassment, Discrimination and Bullying at Work Policy to be dealt with under this procedure, the investigatory stage may be carried forward, avoiding the necessity for a further investigation.

Child Protection Issues

If a complaint against an employee relates to a child protection issue then it is essential that the investigator contacts the Child Protection Officer at the outset to discuss how to proceed. The outcome may be that an investigation should be carried out by the Police and/or Child Protection in which case any investigation by the school will not proceed until discussion has taken place with the relevant agencies.

If an employee who works with children is dismissed or is moved away from work on the grounds of misconduct which harmed a child or placed a child at risk of harm, then the employee's name and details will be referred to the Secretary of State for possible inclusion on the Protection of Children Act List.

● **Schedule Three**

PROCEDURE TO BE USED AT THE HEARING

1. Introductions by the Chair of the panel:
 - Names and role of parties present;
 - Confirmation of the allegations to be considered;
 - Explanation of the process and appropriate behaviour during meeting.
2. School leaders will deliver their case, inviting witnesses as appropriate and outlines key points of their report/findings.
3. Questions by employee and the panel (statements should not be made by the employee at this stage).
4. Employee to respond, bring witnesses and explain their point of view.
5. Questions by school leaders and panel (statements by the Principal should not be made at this stage).
7. The Principal sums up their case, not introducing new evidence.
8. Employee sums up their case, not introducing new evidence.
9. Both parties leave the room and the panel consider their decision assisted by the HR Adviser and/or the Clerk to the Governors to assist with reference to notes of the meeting.
10. Parties are recalled and decision is delivered and explained
11. Within 5 days a written letter is sent to confirm the decision.