Larkspur Primary School

Disciplinary Policy & Procedure

Revised September 2019

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The Disciplinary Policy

1. Aim

1.1. Discipline is essential for the effective management of Larkspur Primary School's affairs and for the safety and wellbeing of all its employees. The aim of this policy is to help and encourage all employees to achieve and maintain the necessary standards of conduct expected by the School in a manner which treats all employees equally and fairly.

2. Definitions

Discipline

2.1. This is the process of ensuring all employees' conduct is in accordance with the School's policies and procedures and is of an acceptable professional standard.

Misconduct in Work

2.2. An employee's behaviour during their working hours that causes their conduct, professionalism or integrity to be questioned.

Misconduct Outside of Work

2.3. An employee's behaviour, including criminal offences, outside of normal working hours likely to impact on the employee's suitability to undertake their duties and responsibilities, and/or is likely to damage the reputation of the School.

3. Scope

3.1. This policy applies to all employees appointed by the Governing Body of the School. In this School, the Governing Body acts as an agent of Gateshead Council in undertaking the functions of the employer.

3.2. The disciplinary policy will:

- maintain and improve the standards and quality of professional conduct in this School;
- demonstrate to employees that the Governing Body is acting in the best interests of the School;
- be implemented in a fair, consistent and responsible way;
- provide a method to improve any apparent shortcomings in behaviour;
- be made available to all employees.

3.3. This policy applies when an employee's conduct falls below acceptable levels except in the following cases:

- where unsatisfactory performance is due an employee's failure to achieve and maintain acceptable standards of performance, in this situation the School's Capability Policy and Procedure should be followed; or

- where unsatisfactory levels of attendance are affecting performance, in this situation the School's Sickness Absence Management Policy and Procedure should be followed.

4. Responsibilities

4.1. The Governing Body will:

- promote high standards of professional conduct at the School;
- delegate authority to the relevant Committee to conduct disciplinary meetings where the Head Teacher is under investigation;
- delegate authority to the relevant Committee to conduct disciplinary meetings where the potential outcome is that an employee may be required to cease working at the School;
- delegate authority to the Head Teacher to conduct disciplinary meetings below the level where the employee may be required to cease working at the School and where the Head Teacher has not already been part of the disciplinary process;
- delegate authority to an Appeals Committee to conduct appeal meetings against any disciplinary sanction issued;
- abide by all relevant legislation and will not discriminate on grounds of any protected characteristic as defined by the Equality Act 2010 regarding all decisions on disciplinary matters;
- have overall responsibility for the implementation of this policy and will ensure the policy and procedure is applied consistently and fairly.

4.2. The relevant Committee will:

- establish a panel of Governors (sufficient numbers to be quorate) to take part in disciplinary meetings with employees when required;
- only allow those Governors who are not employed to work in the School to be part of the panel;
- exercise its responsibilities within the constraints of the policy and procedure;
- treat information about any employee's disciplinary record as confidential and only divulge information when operationally necessary;
- take account of any advice from Human Resources with regards to applying the procedure and employment law;
- ensure all disciplinary meetings are minuted;
- report decisions taken at disciplinary meetings to the next meeting of the full Governing Body.

4.3. The head teacher will:

- ensure that all employees are aware of the standards of conduct expected of them and of the procedures relevant to undertaking their roles in School;
- seek to resolve issues informally, where appropriate before applying the formal procedure;

- seek to ensure that an appropriate investigating officer is appointed, where necessary, unless the Head Teacher is under investigation then this responsibility lies with the relevant Committee;
- advise the employee of the right to be accompanied by a trade union representative or work colleague to any formal meeting.

4.4. The employee will:

- conduct themselves professionally at all times;
- attend meetings to discuss their conduct when required
- arrange for their chosen trade union representative or work colleague to attend any appropriate meetings if they wish to be accompanied;
- raise any concerns in relation to the disciplinary process as part of their response at the disciplinary meeting.

5. Review

5.1. This Disciplinary Policy and Procedure was agreed by the Governing Body of Larkspur Primary School on …….

5.2. It is a non-contractual policy and does not form part of an employee's contract of employment.

5.3. The School may amend it at any time subject to consultation with all employees and recognised trade unions.

The Disciplinary Procedure

1. Introduction

1.1. This procedure is concerned with the formal, structured process of considering disciplinary action for matters relating to the conduct of employees at the School. It is not for those situations where the Head Teacher/Line Manager may consider it necessary to give management advice to an employee regarding their conduct. Management advice, although confirmed in writing, should not be confused with a formal warning as detailed in this procedure.

1.2. Where it is alleged that the conduct of a shop steward or representative of a trade union should be investigated under this procedure, no investigation should take place until the circumstances have been discussed with a full time official from the trade union concerned.

2. Investigation Stage

2.1. Where a disciplinary matter has arisen as a result of an employee's conduct/actions or failure to act, the Deputy Head Teacher, Assistant Head Teacher or Line Manager should first attempt to establish the facts promptly, taking information in the form of brief statements from witnesses as necessary. All parties should be told of the need to observe strict confidentiality at all times.

2.2. The matter will then be referred to the Head Teacher/Chair of the Governing Body (where concerns relate to the Head Teacher's conduct) who will determine:

- whether a formal investigation is required and appoint a formal investigating officer; or
- whether the circumstances/facts have been established and no investigating officer is required.

2.3. At this stage, advice must be sought from Human Resources who will also advise on whether other officers should be consulted.

2.4. Where the matter involves, or is thought to involve, irregularities concerning cash, stores or other property of the School, or any suspected irregularity in the exercise of school financial functions, the Council's Internal Audit Section in Corporate Resources must be notified immediately.

2.5. The investigating officer must not be the person who eventually decides on whether a disciplinary meeting is required. The investigating officer should carry out a thorough investigation to obtain all the relevant facts and should not make any assumptions. This may include obtaining formal written and signed statements and relevant documentary evidence. It is important to be impartial when identifying which evidence is relevant to the investigation. All corroboration, or contradiction, of the allegations must be recorded.

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2.6. Information given by witnesses can be recorded in writing as a formal statement and should include:

- the date, time and place of each or any observation or incident;
- the opportunity and ability of the witness to observe clearly and with accuracy;
- the circumstantial evidence, such as knowledge of a system, procedure or arrangement, the reason for the presence of the witness and why certain small details are memorable;
- whether the witness has suffered at the hands of the employee or has any other reason to fabricate, whether from a personal grudge or any other reason;
- the signature of the witness and date it was signed to confirm the statement as being a true record.

2.7. The investigating officer may determine that witnesses need to be interviewed. They will formally invite witnesses to attend a meeting and will inform them that they may have a trade union representative or work colleague present. The meeting will be noted, and witnesses will have the opportunity to review these notes and either agree them as a true record of the meeting or append any comment to them.

2.8. All witnesses must be informed that they may be asked to attend and give evidence at a disciplinary meeting. A witness cannot be compelled to attend; however, they need to be made aware that failure to attend may affect the consideration given to their statement and therefore the outcome of the disciplinary process.

2.9. There may be situations where witnesses fear reprisals and wish to remain anonymous or confidentiality must be preserved for other reasons. The investigating officer must establish why the witness is reluctant to give a written statement or attend a meeting and reassure them as to the use and purpose of the information given.

2.10. In the first instance witness statements or notes from meetings should be taken without regard to the fact it may subsequently prove necessary to omit or erase certain parts of the statements/notes before submission to others, to prevent identification of the witness.

2.11. Where anonymous witness statements are included in the documentary evidence, there must also be a record attached as to why the witness wishes to remain anonymous. The statement and reasons for anonymity will determine the consideration given to the information provided.

2.12. There are circumstances where it will be necessary to reveal the witness identity and the investigating officer will discuss this with them prior to any disclosure.

2.13. Where it is necessary for the investigation to formally meet the employee, whose conduct has given cause for concern, they will be informed in writing of:

- the reason for the meeting and the nature of the allegations;
- the person undertaking the investigation;
- their requirement to attend;
- that they can be accompanied by a trade union representative or work colleague and are encouraged to do so.

2.14. At the meeting it will be made clear to the employee that this is an investigatory meeting but that the outcome may lead to a disciplinary meeting being held. The meeting will be noted, and the employee will have the opportunity to review these notes and either agree them as a true record or append any comment to them prior to Section 2.16.

2.15. The employee should be kept informed of the progress of the investigation.

2.16. After reviewing all the statements, notes and evidence collected it may be necessary for further investigation to take place to help corroborate the information given.

2.17. The investigating officer must provide a full report of their findings and the reasons for their conclusion and recommendations to the Head Teacher/Chair of the Governing Body. The Head Teacher/Chair of the Governing Body will then determine if a disciplinary meeting is required.

2.18. If, the Head Teacher/Chair of the Governing Body determines that no disciplinary meeting is required, the employee will be advised of this in writing and any references to the investigation will be removed from their personal file. However, in safeguarding matters a record must be kept of the allegation(s), the investigation and subsequent outcome. The employee will be provided in writing with a summary of the investigation, a copy of which will be kept on their personal file.

2.19. Alternatively, the Head Teacher/Chair of the Governing Body may determine that the employee will be issued with management advice with regards to their conduct and the standard of conduct expected in the future. Management advice, although confirmed in writing, is not a formal disciplinary action.

3. Suspension

3.1. After an initial investigation of the facts, or the occurrence of a particular incident, it may be necessary for an employee to be suspended from work and not allowed to attend the School whilst investigations commence or continue.

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3.2. Suspension is not disciplinary action and does not involve any prejudgment or imply that any misconduct has taken place.

3.3. Before considering suspension, and dependent upon the circumstances, all options must be considered to relocate the employee to another location on the School site and/or undertake other duties. Suspension will only be considered where:

- there are grounds for doubt as to the suitability of the employee to continue at work pending certain criminal investigations or proceedings;
- the safety of the employee or other people at work could be affected by their continuing presence in school;
- it is in the interests of the employee or the School for them not to be present at the workplace whilst the investigation is undertaken; or
- the possibility of ceasing to require the employee to work at the School on the grounds of alleged gross misconduct may arise;

3.4. Where it is considered necessary to suspend an employee, they will be required to attend a meeting and informed of the reason(s). The employee will be advised that they can be accompanied by a trade union representative or work colleague. Whilst every effort will be made to accommodate this, in certain circumstances this may not be possible. Alternatively, if the employee is unable to attend, the trade union representative or work colleague can attend on their behalf.

3.5. An employee should only be suspended by the Head Teacher or Chair of the Governing Body, after consultation with Human Resources. Where an employee is suspended such action shall be reported to the Council's Director who has the responsibility for Gateshead's schools. This reporting will be made via Human Resources.

3.6. It is accepted that outside normal working hours it may be necessary for other levels of management to suspend employees and to do so without consultation, but this must only be done when it is considered absolutely necessary and matters reported as soon as possible to the Head Teacher, Chair of the Governing Body and Human Resources.

3.7. During the period of suspension, the employee will receive full pay. This will be an average of the last 12 weeks' pay, to incorporate any contractual overtime and other contractual allowances.

3.8. When a decision to suspend an employee is taken this will be confirmed in writing to the employee by the Head Teacher or Chair of the Governing Body. The letter should include:

- the reason(s) for the suspension;
- the likely length of the suspension and when this will be reviewed;
- that suspension does not constitute disciplinary action;
- that the employee must not attend School premises unless required to;

- that there must be no communication with work colleagues (including forms of social media) about the matter;
- that there must be no accessing their School e-mail account or School systems;
- the name and contact details of an employee in School who will be the point of contact for the employee throughout the investigation process;
- information regarding how to access the School's counselling service;
- that the employee should be contactable, not undertake paid work during the hours they are contracted to work and be prepared to attend any meeting arranged.

3.9. The letter should be hand-delivered or sent by recorded delivery and a copy enclosed for the employee's trade union representative or work colleague.

3.10. The Chair of the Governing Body will regularly review the need for an employee's suspension. At any point, the Governing Body may conclude that suspension is no longer necessary and will therefore terminate the employee's period of suspension. The employee will be advised of this in writing and will be informed of the outcome of the investigation when completed.

4. Disciplinary Meeting

4.1. If it is decided that the matter will be referred to a disciplinary meeting the employee will be informed in writing that they will be required to attend a disciplinary meeting on a specified date and time. Unless the School and the employee agree otherwise, at least 5 working days' notice of such a meeting should be given.

4.2. It is the employee's responsibility to arrange the attendance of their chosen trade union representative or work colleague. If this date is not suitable for the employee or the trade union representative or work colleague, they must offer an alternative date which is within 5 working days of the original date.

4.3. The employee must be informed in the disciplinary meeting invite letter of:

- the subject matter/allegation(s) made;
- all relevant evidence from the investigation that is to be relied upon, including the investigating officer's full report;
- their potential to be required to cease working at the School (only if it is a possible outcome should the allegations be proven);
- the requirement to forward to the chair of the meeting, any documents upon which they intend to rely, 1 working day prior to the date of the meeting;
- their right to call any necessary witnesses and to give sufficient notice to allow their attendance;
- the right to be accompanied at the meeting by a trade union representative or work colleague;
- the fact that the disciplinary meeting will proceed as scheduled where the employee chooses not to attend.

4.4. The letter and the documentation that will be used at the meeting should be hand-delivered or sent by recorded delivery. A copy of the letter and the documentation should be enclosed for the employee's trade union representative or work colleague.

4.5. Where an employee is unable to attend the meeting, they may nominate their trade union representative or work colleague to present their response to the allegations and any supporting documentation on their behalf. Alternatively, the employee may submit their response in writing to the chair of the meeting. On these occasions a decision will be made on the evidence available.

4.6. The disciplinary meeting will be held by the Head Teacher/relevant Committee who will be advised by Human Resources. It will be the chair of the meeting's responsibility to explain the purpose of the meeting, identify those in attendance and how the meeting will be conducted.

4.7. At the disciplinary meeting the investigating officer must state the allegations made against the employee and present their report first, using any statements, documentary evidence and witnesses as are considered necessary.

4.8. The employee and/or their trade union representative/work colleague will be able to ask questions of the investigating officer and call those witnesses who have provided statements for clarification of their statements. The investigating officer may then question the witnesses. The investigating officer and witnesses may be questioned by the Head Teacher/Committee and any advisers present.

4.9. Where a witness is unwilling to attend or there is a genuine fear of reprisal if they attend the disciplinary meeting, the Head Teacher/Committee will interview the witness separately and satisfy themselves as to what weight is to be given to the information. The factors that would be considered include:

- the seriousness of the allegation(s) raised;
- the credibility of the concern;
- the likelihood of confirming the allegation from other sources.

4.10. The employee must then be given the opportunity to respond to the allegations made against them. If the employee or their representative raise any particular and relevant issue with a statement from a witness who is not in attendance, it may be desirable to adjourn for the Head Teacher/Committee to make further inquiries of the witness. The employee then may be questioned by the investigating officer, Head Teacher/Committee and any advisers present.

4.11. Once all the information has been presented and examined, both parties must be given the opportunity to summarise their main points to ensure

nothing has been missed. The employee must finally be asked if they have anything further to say.

4.12. The employee and their representative and the investigating officer will leave the room but usually will remain in the School to await the decision which should be communicated to them orally. If it is not practicable or sensible for them to remain in school during management's deliberations, then they may be asked to return to hear the decision at a later time or by telephone if requested.

4.13. The Head Teacher/Committee, advised by Human Resources, will then decide in private whether all or any of the allegation(s) are proven or not. The decision must be reached on a balance of probabilities and must be taken considering all the available evidence, both written and oral, and with appropriate weight given to any corroboration of the evidence. If disciplinary action is justified the level of sanction to be applied must be determined considering any mitigating factors.

4.14. It is important that full and careful notes are taken during the disciplinary meeting and the Head Teacher/Committee will identify a separate person to take the necessary notes to allow the other parties to concentrate fully on the discussions.

4.15. If, at the conclusion of a disciplinary meeting, it is decided that no disciplinary action is to be taken, the employee will have this confirmed to them in writing and all written references to it will be deleted from their personal file. However, in safeguarding matters a record must be kept of the allegation(s), the investigation, any suspension and subsequent outcome. The employee will be provided in writing with a summary of the information, a copy of which will be kept on their personal file.

5. Disciplinary Action

5.1. If the Head Teacher/Committee finds that disciplinary action is justified the employee will be advised of this, and the outcome and reasons will be confirmed in writing. The employee will also be advised of the right of appeal.

5.2. The following are the various levels of disciplinary sanction. Their use will vary depending upon the nature and seriousness of the offence(s) and whether the employee already has any current warnings on record. The normal practice will be to progress through written warning, final written warning to ceasing to require the employee to work at the School with notice where there has been a failure to improve after the issuing of previous warnings.

5.3. The levels of sanctions do not have to be followed in strict order and there may be circumstances where a sanction may need to be repeated/extended or result in ceasing to require the employee to work at the School after a written warning.

Written Warning

5.4. When it is decided that the employee's behaviour amounts to misconduct the employee should receive a written warning. A record of the written warning will be kept on the employee's personal file, but it should be disregarded for disciplinary purposes after 6 months if no further misconduct occurs.

Final Written Warning

5.5. If the employee currently has a written warning about conduct, then a final written warning may be given. This may also be the decision where a first offence of misconduct is deemed to be of a serious nature. A record of the final written warning will be kept on the employee's personal file, but it will be disregarded for disciplinary purposes after 12 months (or longer in exceptional circumstances) if no further misconduct occurs. The Head Teacher/Committee must first consult with Human Resources before any extension is agreed.

Alternative employment short of ceasing to require the employee to work at the School

5.6. Where there has been a very serious offence of misconduct by the employee such that they cannot remain in their post and which would warrant ceasing to require them to work at the School, but for some mitigating factors, the Head Teacher/Committee may consider alternative employment within the School.

5.7. Alternative employment is dependent on a suitable alternative post being available immediately and the employee agreeing to the transfer. Suitable alternative employment may include a post at a lower grade than the employee's current post. Pay protection arrangements do not apply where alternative employment is provided as an alternative to ceasing to require the employee to work at the School.

5.8. If alternative employment is found, a Final Written Warning will also be issued. A record of the alternative employment and Final Written Warning will be kept on the employee's personal file for a period of 12 months.

5.9. If alternative employment is not possible then the employee will be required to cease working at the School.

Cease to be Required to Work at the School with Notice or with Pay In lieu of Notice

5.10. Where an employee currently has a final written warning and a further act of misconduct occurs they may be required to cease working at the School with notice or immediately with pay in lieu of their notice period depending on the circumstances. This may also be the decision where a first offence of misconduct is deemed to be of a very serious nature.

5.11. A record of the requirement for the employee to cease working at the School will be kept on the employee's personal file and the Council will be notified by the Committee of this decision. The Council will issue a notice of dismissal informing the employee of their notice period and their date of dismissal.

5.12. The commencement of a non-teaching employee's notice period will be the day after the employee has been notified, in writing, by the Council. There may be occasions where dismissal with pay in lieu of notice is appropriate and therefore dismissal will be with immediate effect and the notice period paid as a lump sum payment (subject to tax and national insurance deductions) to the employee.

5.13. The date of dismissal for a teacher will be will be the next relevant date within the academic year in line with their terms and conditions. A teacher will receive full pay with normal deductions for the period of their notice but may not be required to attend the School.

<u>Gross Misconduct – Cease to be Required to Work at the School without Notice</u>

5.14. Where offence(s) amount to misconduct of a most serious nature/gross misconduct employees may be summarily required to cease working at the School without receiving notice or pay in lieu of their notice period.

5.15. Gross misconduct will lead to summarily be required to cease working at the School and examples of offences which may lead to this include:

- unauthorised removal, malicious damage or serious misuse of school property or name;
- offences of dishonesty (including falsification of official records);
- physical violence or bullying;
- falsification of time sheets, subsistence, expenses claims or record systems;
- theft or fraud;
- serious misuse of the internet or email or accessing Internet sites containing offensive or obscene material;
- serious breach of health and safety rules;
- serious breach of professional conduct;
- unlawful discrimination or harassment;
- sexual offences;
- serious inability at school brought on by alcohol or illegal drugs;
- or serious misconduct outside of work or serious criminal offences.

5.16. This list is neither exhaustive nor exclusive and there may be other offences of similar seriousness in addition to these which could constitute gross misconduct. Therefore, this list must only be regarded as illustrative.

5.17. Where the School has, as a result of the employee's misconduct, suffered a quantifiable financial loss, the School will take legal action to pursue recovery after ceasing to require the employee to work at the School.

5.18. A record of the decision will be kept on the employee's personal file and the Council will be notified by the Committee of this decision. The Council will issue a notice of summary dismissal.

6. Confirming Disciplinary Action in Writing

6.1. Following a decision to take any disciplinary action, not including ceasing to be required to work at the School, the employee will be informed in writing by the Head Teacher/Committee of:

- the details of the offence(s) stating the grounds for and the level of sanction issued;
- that they may be liable to further disciplinary action and sanctions if they commit further offences;
- the duration of the disciplinary sanction and its expiry date;
- where alternative employment is offered, the nature of this employment;
- the right of appeal.

6.2. Following a decision to cease to require the employee to work at the School, the Head Teacher/Committee will write to the employee to inform them of:

- the details of the offence(s) stating the grounds for and the level of sanction issued;
- the effective date;
- the right of appeal.

6.3. The letter should be hand-delivered or sent by recorded delivery and a copy enclosed for the employee's trade union representative or work colleague.

7. Expiry of Warnings

7.1. In most cases the concern with an employee's conduct which led to the sanction will have been an isolated incident which has been appropriately dealt with by the procedure and the sanction will have been effective in gaining the necessary improvement.

7.2. In most cases, therefore, warnings should not be referred to for disciplinary purposes after the following time periods:

- Written Warning 6 months
- Final Written Warning 12 months

7.3. Employees will be notified in the disciplinary action letter that the Final Written Warning will be disregarded after 12 months but that it may, in exceptional circumstances, be kept on record for a longer period. The Head Teacher/Committee must first consult with Human Resources before any extension is agreed. An employee has a right of appeal against the decision to extend a final written warning beyond the 12-months' period.

8. Cease to be Required to Work at the School for Some Other Substantial Reason (SOSR)

8.1. There may be situations where an employee's requirement to cease working at the School falls outside the School's disciplinary, capability, redundancy or sickness absence management policies and procedures. Therefore, the School reserves the right to cease to require an employee to work at the School for some other substantial reason (SOSR). For example:

- a serious and irretrievable breakdown in relationships including those with third parties with whom the School works;
- serious reputational damage to the School; or
- breach of trust and confidence and/ or conflict of interest.

8.2. Ordinarily an investigation will be undertaken to establish whether there are grounds to consider dismissal for some other substantial reason. The School will follow sections 2 and 3 of the disciplinary procedure above to conduct this investigation.

8.3. Where it is determined that an employee is to be referred to a formal meeting to discuss the findings of the report, the School will require them to attend an SOSR Meeting. This meeting will be conducted in line with section 4 of the disciplinary procedure above.

8.4. The Head Teacher/Committee following consideration of all information presented will determine whether:

- the employee should be required to cease working at the School with notice or pay in lieu of notice;
- the employee should cease to work in their existing post and be offered alternative employment in a different post at the same grade, or lower grade without pay protection;
- there are insufficient grounds to cease to require the employee to work at the School; or
- the situation should be considered under an alternative policy and procedure.

9. Right of Appeal

9.1. An employee has the right of appeal to the Appeals Committee of the Governing Body against any level of disciplinary action and the appeals process as detailed in the School's appeals procedure must be followed.