

## THE BLESSED EDWARD BAMBER CATHOLIC MULTI ACADEMY TRUST DISCIPLINARY POLICY AND PROCEDURE

### 1. SCOPE OF PROCEDURE

- 1.1 This procedure shall apply to all employees employed by the Blessed Edward Bamber Catholic Multi Academy Trust.
- 1.2 The purpose of the procedure is to give a structure to improve conduct to the standards expected and to facilitate the fair dismissal of those who have not improved or whose conduct is so unacceptable as to warrant dismissal without notice.
- 1.3 The Trust delegates its authority in the manner set out in this procedure.
- 1.4 There may be some occasions where an employee's behaviour could also be described as incapability. This Disciplinary Policy and Procedure and the Trust's Capability Procedure may be used concurrently whilst the Trust endeavours to ascertain if the behaviour is misconduct or incapability.
- 1.5 There may be occasions where an employee's conduct could relate to their health. This Disciplinary Policy and Procedure may be used concurrently with the Trust's Sickness Absence Policy and Procedure. In particular, if an employee goes off sick following the use of this Disciplinary Policy and Procedure the Trust may use its Sickness Absence Policy and Procedure.
- 1.6 There may be occasions when an employee attempts to use the Trust's Grievance Resolution Policy and Procedure in connection with actions taken under this Disciplinary Policy and Procedure. This shall not lead to any delay or pause in the conduct of any matters under the Disciplinary Policy and Procedure.
- 1.7 There may be occasions where this procedure needs to be modified to comply with the requirements of the Trust's Child Protection and Safeguarding Policies, for example by allowing the Local Authority Designated Officer to offer advice to the Trust and its officers at appropriate stages.
- 1.8 In this policy "working day" means any day on which you would ordinarily work. In other words it may be different for teaching and non-teaching staff. It will be different for full-time and part-time employees.

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**2. INFORMAL ACTION**

- 1.1 Wherever possible and appropriate, first occurrences of minor breaches of discipline / standards may be dealt with informally, through the normal course of management counseling, supervision and advice. This may be recorded in writing and referred to at a later stage to evidence that an informal approach was attempted and the success or failure of such an approach.
- 1.2 Failure to comply with informal action should not on its own be used as justification for issuing a higher form of sanction than would otherwise have been imposed under the formal process.

**3. INVESTIGATING, DISCIPLINARY AND APPEAL MANAGERS**

<i>Employee Level</i>	<i>Investigating Manager</i>	<i>Disciplinary Manager</i>	<i>Appeal Manager</i>
CEO/Executive Director	Chair of the Board or other Board Director, appointed by the Chair	Trust Disciplinary Panel	Trust Appeal Panel
Headteacher	CEO/Executive Director	Trust Disciplinary Panel	Trust Appeal Panel
All other employees	Headteacher	CEO/Executive Director	Trust Appeal Panel

**4. SUSPENSION**

- 1.1 In order to undertake a fair investigation into allegations of potential misconduct, there may be the need to consider suspension of an employee. Where the Investigating Manager considers that this action is appropriate the relevant Disciplinary Manager will carry out the suspension.
- 1.2. The Headteacher will inform the CEO/Executive Director of the suspension.
- 1.3 Suspension should not be undertaken without good reason. An employee may be suspended from duty in the following circumstances:
- where the allegations are so serious that dismissal for gross misconduct is possible
  - where a child or children are at risk
  - where a suspension is necessary to allow the conduct of an investigation to proceed unimpeded
  - where there may be a risk to the employee him/herself and it may not be in his/her interests to remain in the school

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- 1.4. Suspension will be without prejudice and is not a disciplinary sanction. It will be on full pay and will be the subject of a monthly review by the relevant Disciplinary Manager
- 1.5. Suspension will normally be undertaken in person, but may be undertaken in writing in exceptional circumstances. If it is undertaken in person it will be confirmed in writing.
- 1.6. During a period of suspension the Trust may require you:
- 1.1.1 to refrain from attending the Academy/Trust premises at any time without the prior agreement of the relevant Disciplinary Manager.
- 1.1.2 to refrain from communicating in any way with parents pupils and Trust Members except:
- (a) with the prior agreement of the Disciplinary Manager or
  - (b) where following the investigation you are called to a formal disciplinary meeting, when you may then approach parents or pupils as potential witnesses, but this must be done via the Investigating Manager to avoid any breach of the Data Protection Act or confidentiality.
- 1.1.3 to refrain from discussing the fact of your suspension or the fact of or nature of the allegations against you with any member of staff except:
- (a) with the prior agreement of the Disciplinary Manager;
  - (b) for communication with your union representative;
  - (c) where you are called to an interview with the Investigating Manager or a disciplinary meeting when you may approach work colleagues for the purposes of identifying a willing work companion but only if you do not have a trade union representative, or
  - (d) where you are called to a formal disciplinary meeting you may approach work colleagues as potential witnesses in support of your case.
- 1.7. During a period of suspension the Trust may suspend your access to your email account and to the MLE/VLE.
- 1.8. During a period of suspension the Trust may take such steps as necessary to cover your lessons or other commitments.

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**5. FORMAL PROCESS**

**1.1 Step 1 - Investigation**

- 1.1.1 The Investigating Manager will conduct an investigation into the alleged conduct. Unless you have already been provided with a copy of this Policy and Procedure, a copy will be supplied to you prior to any meeting held.
- 1.1.2 The Investigating Manager may appoint any other person from within the Trust or externally to assist in the investigation.
- 1.1.3 The investigation may include a face to face interview with you. You may, if you wish provide a written statement or response to the Investigating Manager.
- 1.1.4 You are required to co-operate fully with the Investigating Manager to ensure that the investigation can be completed as swiftly and thoroughly as possible.
- 1.1.5 The Investigating Manager will produce an Investigation Report setting out evidence and detailed allegations and a recommendation. The recommendation may be that there is: no case to answer, need for written management advice to be given or a need for a formal disciplinary hearing.
- 1.1.6 You will be sent a copy of the Investigation Report.

**1.2 Step 2 – Disciplinary Hearing**

- 1.1.1 If the Investigation Report contains a recommendation that you be subject to a formal disciplinary action, you shall be required to attend a formal disciplinary hearing with the Disciplinary Manager.
- 1.1.2 The disciplinary hearing shall take place at least 5 working days after the Investigation Report was sent to you.
- 1.1.3 The Disciplinary Manager shall consider all the evidence presented and you shall have an opportunity to present evidence (including witness evidence) in your defence and offer any evidence in mitigation.
- 1.1.4 The Disciplinary Manager may adjourn the disciplinary hearing to allow further investigations in the light of your evidence and will reconvene to give you an opportunity to comment on any further evidence produced by further investigations
- 1.1.5 The process to be followed at the hearing is as follows.
  - i. The presenter of the report should present the report to the Disciplinary Manager and will be entitled to call and recall witnesses as necessary. Exceptionally, the Trust may appoint an alternative person to present the report (eg. an HR Adviser)
  - ii. The employee and/or his/her representative will be entitled to question the presenter of the report and any witnesses called
  - iii. Witnesses should only normally be present when they are required to give evidence directly to the hearing.

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- iv. The employee and/or his/her representative will be entitled to make an opening statement and present any documents to the hearing and to call and recall witnesses as necessary.
- v. The presenter of the report will be entitled to question the employee and any witnesses who have been called by him/her.
- vi. The presenter of the report will be entitled to make a closing statement to the hearing and, thereafter, the employee or their representative will have the same right.
- vii. At any stage during the hearing, the Disciplinary Manager will be entitled to question any person who has made a statement or given evidence at the hearing
- viii. The parties will then withdraw from the meeting and the Disciplinary Manager will reach a decision, in private. The decision will be conveyed, orally, to both parties and, subsequently, confirmed in writing within 5 working days. The decision maybe that there is no case to answer, written management advice is required or a formal disciplinary sanction be applied.

### 1.3 Step 3 - Appeal

- 1.1.1 If the Disciplinary Manager decides to impose a formal disciplinary sanction you will have the right to appeal to the Appeal Manager provided that you do so in writing to the Clerk to the Board within 10 working days of the written notification of the Disciplinary Manager's decision.
- 1.1.2 Your appeal must set out the grounds of appeal in detail. This will enable the Clerk and Appeal Manager to determine if the appeal is to be by way of a rehearing of the case or by way of a review of the case.
- 1.1.3 The Appeal meeting will normally take place within 20 working days of your notice of appeal being received by the Clerk to the Board.
- 1.1.4 The Appeal Manager may not impose a more severe sanction than that imposed by the Disciplinary Manager.
- 1.1.5 The Appeal Manager may consider any new evidence produced by you not available to the Disciplinary Manager.
- 1.1.6 The Appeal Manager may only consider new evidence produced by the Disciplinary Manager if it touches upon your credibility in relation to evidence you have already given or if it rebuts any new evidence produced by you or any assertions made by you in your grounds of appeal.

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**6. FORMAL SANCTIONS**

The Disciplinary Manager may impose the following sanctions:

1.1 A First Written Warning

1.1.1. A First Written Warning will remain live for **12** months from the date that the Disciplinary Manager's written decision was sent to you.

1.1.2. For a first disciplinary offence (ignoring any informal action), a First Written Warning would be the normal response.

1.2 A Final Written Warning

1.1.1 A Final Written Warning will remain live for **18** months from the date that the Disciplinary Manager's written decision was sent to you.

1.1.2 A Final Written Warning would normally be given for a second disciplinary offence, committed or discovered during the currency of a live First Written Warning (even if that First Written Warning related to a different type of misconduct)

1.1.3 A Final Written Warning could be given for serious misconduct regardless of previous disciplinary history, if the conduct is sufficiently serious.

1.1.4 Records of warnings will be expunged at the end of the stated time and any note or reference thereto should be removed from the employee's personal file and the employee concerned informed, in writing, at the time this takes place. The Protection of Children Act allows for certain types of misconduct relating to the protection of children and associated warnings to remain on file for longer than the period specified. In such an event, the employee will be informed, in writing, and the longer period will be specified. This retention will be reviewed after the term specified. Such a review will be the responsibility of the CEO/Executive Director.

1.3 Dismissal on notice

1.1.1 Dismissal on contractual notice would be given for a disciplinary offence (other than an act of gross misconduct) committed or discovered during the currency of a live Final Written Warning (even if the Final Written Warning related to a different type of misconduct).

1.1.2 For the avoidance of doubt, the notice commences immediately and does not await the outcome of any appeal.

1.1.3 If your contract contains a payment in lieu of notice clause, the Trust may exercise that clause to bring your contract to an end with immediate effect.

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### 1.4 Dismissal without notice.

1.1.1 Dismissal without notice or compensation (also known as Summary Dismissal) will only occur if you have committed an act of gross misconduct or otherwise have destroyed the trust and confidence required between the employee and the Trust.

1.1.2 For the avoidance of doubt, the dismissal takes effect immediately and does not await the outcome of any appeal.

1.1.3 The following is a **non-exhaustive** list of matters which the Trust considers may amount to gross misconduct:

- (a) Conduct incompatible with or prejudicial to the religious character of the Trust or the precepts or tenets of the Catholic Church
- (b) Conduct that is likely to bring the Trust or the Church into disrepute
- (c) Conduct giving rise to any Child Protection issue
- (d) A serious breach of any relevant code of conduct or professional standards
- (e) Theft of any property
- (f) Malicious or wilful damage to any property
- (g) Falsifying any documents whether for personal gain or not
- (h) Ordering any goods or services on behalf of the Trust from a supplier in which you or a relative have a personal interest (whether financial or not) without declaring that interest and without the permission of the Trusts' Accounting Officer
- (i) Dishonesty
- (j) Violence to any person
- (k) Unlawfully restraining a pupil
- (l) Abusive threatening or offensive language or behaviour to any person
- (m) Unlawful discrimination or harassment
- (n) Bullying
- (o) Deliberate refusal to carry out a lawful and safe instruction
- (p) Absence from work without leave or reasonable explanation
- (q) Disclosing the contents of any live examination paper or assessment in advance to any pupil or parent
- (r) Concealing any actual or attempted cheating by any pupil or colleague
- (s) Attending work or undertaking duties whilst under the influence of alcohol or unlawful drugs
- (t) Misuse of the Academy/Trust's ICT (including internet and email access) to view or distribute obscene, pornographic, defamatory or otherwise unacceptable material
- (u) Supplying your personal contact details to a pupil without express authorisation from the Headteacher/CEO/Executive Director
- (v) Interacting with a pupil online out of Academy hours other than through the Managed Learning Environment
- (w) Making any sexual or romantic contact with any pupil whatever the age of the pupil
- (x) Breaching the confidentiality or data protection obligations surrounding a pupil
- (y) Covert recording of any meetings without the knowledge or consent of all persons present
- (z) Serious breach of health and safety procedures
- (aa) Serious negligence (whether or not leading to any actual loss)
- (bb) Criminal activity during the course of employment

Effective date: July 2017

Version 1.4

Blessed Edward Bamber Catholic Multi Academy Trust

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- (cc) Making a false malicious or vexatious allegation against the Academy/Trust, a parent, pupil, colleague or Trust member

1.5 Voluntary demotion as an alternative to higher formal sanction

- 1.1.1 There may a situation where the Disciplinary Manager considers that a recent promotion or job change has been a contributory factor in your misconduct.
- 1.1.2 The Disciplinary Manager may offer you the option of taking a voluntary demotion as an alternative to a higher formal sanction.

**7. TRUST PANELS**

- 1.1 Trust Disciplinary and Appeal Panels shall comprise three members not previously involved in the matter.
- 1.2 In the event that there are insufficient Trust Members available to participate in a Panel, the Chair of the Board, following advice from the Diocesan Schools Commission, may appoint associate members to solely participate in the appropriate Panel.

**8. COMPANION**

- 1.1 If you are the subject of disciplinary allegations leading to a disciplinary interview by the Investigation Manager or a hearing with the Disciplinary Manager or Appeal Manager, you may be accompanied at such interview or hearing by a companion who must be either be a willing work colleague not involved in the substance of the allegations against you or an accredited trade union representative of a union recognised by the Trust.
- 1.2 You must let the relevant Manager know who your companion will be at least one working day before the interview or meeting.
- 1.3 If you have any particular need, for example, a disability, you may also be accompanied by a suitable helper.
- 1.4 Your companion can address the meeting in order to:
  - (a) put your case
  - (b) sum up your case
  - (c) respond on your behalf to any view expressed at the interview meeting.
- 1.5 Your companion can also confer with you during the interview meeting.
- 1.6 Your companion has no right to answer questions on your behalf, or to address the interview meeting if you do not wish it, or to prevent you from explaining your case.
- 1.7 Where you have identified your companion to the relevant Manager and your companion has confirmed in writing to the relevant Manager that they cannot attend the date or time set for the

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interview meeting/hearing, the relevant Manager will postpone the interview meeting/hearing for no more than five working days from the date set by the Academy to a date or time agreed with your companion provided that it is reasonable.

### 9. TIMING OF INTERVIEW MEETINGS/HEARINGS

Interview or hearings under this procedure may:

- 1.1 need to be held when you were timetabled to teach
- 1.2 exceptionally be held during planning preparation and administration time if this does not impact on lesson preparation
- 1.3 not be held on days on which you would not ordinarily work.

### 10. VENUE FOR INTERVIEWS OR HEARINGS

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

### 11. ASSISTANCE

- 1.1 In any case concerning the religious character of the Trust, the Diocesan Schools Commission must be notified immediately the Trust becomes aware of the allegations and it may be represented at any interview or meeting to advise the Interviewing Manager, Disciplinary Manager or Appeal Manager.
- 1.2 In all cases involving any disciplinary sanction in relation to the CEO/Executive Director or Headteacher(s) or to a person on the Leadership Spine or to potential or actual dismissal of any other member of staff the Diocesan Schools Commission may send a representative to advise the Disciplinary Manager or Appeal Manager.

### 12. TRADE UNION OFFICERS

The Trust notes and adopts the ACAS Code of Practice's statement "Where disciplinary action is being considered against an employee who is a trade union representative, the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement."

### 13. REFERRALS

- 1.1 Where a teacher is dismissed for serious misconduct (or may have been dismissed for serious misconduct if the teacher had not resigned) the Trust must consider whether to refer the circumstances to the Teaching Agency under section 141D of the Education Act 2002 which came into force on 1 April 2012.
- 1.2 Where a person working within the Trust (whether a teacher or not) is dismissed or would have been dismissed if they had not resigned) because that person committed conduct:

- (a) which endangered a child or was likely to endanger a child

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- (b) which if repeated against or in relation to a child, would endanger that child or would be likely to endanger him
- (c) involving sexual material relating to children (including possession of such material)
- (d) involving sexually explicit images depicting violence against human beings (including possession of such images)
- (e) of a sexual nature involving a children

The Trust has a legal duty to refer to the Disclosing and Barring service anyone who has harmed, or poses a risk of harm, to a child, or if there is reason to believe the member of staff has committed one of a number of listed offences, and who has been removed from working (paid or unpaid) in regulated activity or would have been removed had they not left. The list of offences is set out in the Safeguarding Vulnerable Groups Act 2006 (Prescribed criteria and Miscellaneous Provisions) Regulations 2009.

**14. REVIEW OF THIS PROCEDURE**

This procedure was first produced in September 2014 and follows the principles set out in the Catholic Education Service (CES) policy and procedure for use in Catholic Voluntary Aided Schools and Academies in England. It will be kept under regular review and any proposed changes will be the subject of consultation with the recognised trade unions.

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