

Policy and Procedure on Disciplinary Action

Cambian Dilston College

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review	This Policy will be updated when appropriate, in line with any legislative, regulatory or Company changes.
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1. Monitoring and Review

- 1.1.** The Proprietor will undertake a formal review of this policy for the purpose of monitoring and of the efficiency with which the related duties have been discharged, by no later than three years from the date of approval shown above, or

earlier if significant changes to the systems and arrangements take place, or if legislation, regulatory requirements or best practice guidelines so require.

- 1.2.** The local content of this document will be subject to continuous monitoring, refinement and audit by the Head of Service.

Signed:



Jeremy Wiles
Group Executive Director- Children's Services
October 2023

2. Terminology

- 2.1.** Our aim is to use consistent terminology throughout this policy and all supporting documentation as follows:

'Establishment' or 'Location'	this is a generic term which means the Children's Home/school/college. Cambian Dilston College is a College.
Individual	means any child or young person under the age of 18 or young adult between the ages of 18 and 25. Cambian Dilston College we have young people attending and/or residing between the ages of 16 and 25.
Service Head	This is the senior person with overall responsibility for the college. At Cambian Dilston College this is the Principal and who is Marie Flatman for education, and the Head of Care, Scott Chapman.
Key Worker	Members of staff that have special responsibility for Individuals residing at or attending the Establishment.
Parent, Carer, Guardian	means parent or person with Parental Responsibility
Regulatory Authority	Regulatory Authority is the generic term used in this policy to describe the independent regulatory body responsible for inspecting and regulating services. At Cambian Dilston College this is Ofsted, DfE and CQC.
Social Worker	This means the worker allocated to the child/family. If there is no allocated worker, the Duty Social Worker or Team Manager is responsible.
Placing Authority	Placing Authority means the local authority/agency responsible for placing the child or commissioning the service
Staff	Means full or part-time employees of Cambian, agency workers, bank workers, contract workers and volunteers.

3. Introduction

- 3.1.** This policy explains the disciplinary procedure to be used throughout the Company.

- 3.2.** It affects all employees.
- 3.3.** Please make sure that you are familiar with the detail and what is expected of you under this policy.

4. Purpose

- 4.1.** This policy is designed to achieve and maintain standards of individual conduct required by the law, by Company policy, and as expected by relevant codes of practice and professional standards. It is also to help and encourage all of our employees to achieve and maintain standards of attendance and job performance.
- 4.2.** This policy should ensure that the Company complies with all the relevant current legislation and other National Standards which govern this area of our work. Also, to conform to the standard of practice as set out in the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 4.3.** To help promote positive employment relations as well as fairness and consistency in the treatment of employees.
- 4.4.** To set out a clear description of procedures for all employees.

5. Policy

- 5.1.** It is necessary for the proper operation of the Company's business and the health and safety of our employees that we operate a disciplinary procedure. The following procedure will be applied fairly in all instances where disciplinary action is regarded as necessary by the Company's management.
- 5.2.** The Company processes personal data collected during the investigation stage and any subsequent stages of disciplinary action in accordance with our data protection policy. In particular, data collected as part of the investigation stage and any subsequent stages of disciplinary action is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the disciplinary procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in line with the Company's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the disciplinary procedure.
- 5.3.** Where misconduct may reasonably be considered to be minor, a manager may deal with the matter informally, resulting in an explanation of the standard of conduct required which does not constitute a disciplinary warning, or form part of this process. This may be a part of the supervision meeting or a separate discussion and there is no entitlement to be accompanied at such meetings.
- 5.4.** Without prejudice to 5.1 and 5.3 above, the procedure does not apply to:
- Termination during, or at the end of a probationary period of employment (including any extended probationary period) - where a basic procedure in line with the statutory dismissal and disciplinary procedure will apply instead;
 - Termination by mutual consent.
- 5.5.** This policy is not contractual and the Company reserves the right not to invoke the disciplinary procedure within the first two years of employment.
- 5.6.** The procedure may be implemented at any stage if an employee's alleged misconduct warrants this. No employee will be dismissed for a first breach of discipline except in the case of gross misconduct where the penalty could be dismissal without notice or payment in lieu of notice.
- 5.7.** Timescales referred to throughout this policy may be varied by agreement between the employee and The Company.
- 5.8.** At all stages of the disciplinary process the employee will have the right to be accompanied by a trade union representative or work colleague.

5.9. Matters that Cambian view as amounting to disciplinary offences include (but are not limited to):

- persistent bad timekeeping;
- unauthorised absence;
- damage to Company property;
- failure to report safeguarding issues in a timely manner;
- abusive behaviour;
- bullying or harassment;
- failure to follow a reasonable request from a manager or supervisor;
- poor attendance;
- breach of Health & Safety;
- breach of general data protection regulations;
- theft / fraudulent activity, dishonest behaviour;
- smoking in non-designated areas of the Company's premises;
- failure to follow company policy & procedure;
- bribery offences under the Bribery Act 2010.
- Failure to comply with a duty or restriction (either on the part of the Employee or on that of the Company), imposed by, or under an enactment.

6. Procedures

Investigation

- 6.1.** An employee's supervisor, manager or designated investigations manager will promptly investigate any matter that is reasonably thought to infringe any of the Company's policies, rules or procedures or any situation that may otherwise

be a disciplinary matter. The employee will be informed as soon as possible about the nature of the complaint and the decision to investigate.

- 6.2. The Investigation manager will gather the facts of the situation and will remain unbiased throughout the course of the investigation.
- 6.3. Where the investigation relates to safeguarding, it may be necessary to withhold the specifics of the case until later on in the process.
- 6.4. Depending on the circumstances of the case, the employee will usually be invited to attend an investigation meeting. The employee will be informed at the outset that the meeting is purely investigatory. There will usually be an investigation manager and a note taker present at these meetings.
- 6.5. The Company will always endeavour to provide an employee with 48 hours' notice to attend an investigation meeting, but reserve the right to shorten this time if availability of all party's demand, and if to do so would cause unnecessary delay.
- 6.6. On occasion, it may be necessary for your manager to hold a fact-finding discussion with you, without notice. If it is deemed necessary, an investigation process will begin following this.
- 6.7. The Company reserves the right to dispense with an investigation meeting and to proceed directly to a formal disciplinary hearing.
- 6.8. Although there is no statutory right to be accompanied at an investigatory meeting, the Company recognise it may be of benefit to employees to be accompanied by a work colleague. If you do wish to be accompanied by a work colleague you should inform us of your chosen companion in advance of the meeting. If it is felt there is a conflict of interest then you may be asked to choose an alternative colleague to accompany you.
- 6.9. Please note this does not extend to accompaniment by a trade union representative at this stage of the process.
- 6.10. The investigatory process will be conducted as timely as possible however, can be subject to the availability of witnesses who may be on annual leave or absent from work due to sickness. This can delay the process but we will endeavour to ensure you are informed of any undue delay.

Use of Suspension

- 6.11. If at any point before investigation or during investigation, it is believed that the matter involves serious or gross misconduct, is of a sensitive nature or where the presence of the employee at work may hinder the investigation, the employee may be suspended from work and will be paid their basic rate of pay. Any decision to suspend shall be made by a senior manager in conjunction with HR, and they will discuss with the employee how they would prefer their absence to be communicated to colleagues.
- 6.12. Suspension will be confirmed in writing outlining the nature of the allegation where possible, and confirming that the nature of the suspension is precautionary and without inference of guilt. The suspension is not disciplinary, and is

pending the outcome of either investigation or disciplinary proceedings. This decision is made to protect both the Company and the Employee.

- 6.13.** If the allegation is in relation to a safeguarding issue, it may not be possible to disclose full details of the incident until the meeting, where the allegation will be shared in full.
- 6.14.** The suspension letter will confirm who the nominated contact person is for the employee, and the employee is responsible for ensuring that they keep in touch with the nominated contact person regularly, during the suspension period.
- 6.15.** The employee should not contact any other employee of the Company other than the nominated contact. If the employee needs to contact any other employee in relation to calling a witness to a disciplinary meeting, then they should make these arrangements via the nominated contact person.
- 6.16.** Any additional support the individual may feel they need can be provided upon request, and must be raised to the nominated contact.
- 6.17.** The length of suspension will be kept as short as reasonably possible.

Disciplinary Hearing

- 6.18.** If upon completion of an investigation, there are reasonable grounds to believe that an employee has committed an act of misconduct; the employee will be invited to attend a disciplinary hearing which will be chaired where possible by a different manager to the one who carried out the investigation. In the event of a disciplinary hearing taking place the Company will:
- endeavour to give the employee a minimum of three days' advance notice of the hearing in writing;
 - outline the purpose of the hearing and confirm it will be held under the Company's disciplinary procedure;
 - inform of the right to be accompanied to the disciplinary meeting by a Company employee or trade union representative.
 - provide written details of the nature of the alleged misconduct. If the allegation is in relation to a safeguarding issue.
 - provide relevant information (which should include witness statements and any other evidence) prior to the hearing.
- 6.19.** If the employee is unable to attend a disciplinary hearing and provides an appropriate reason, the hearing may be adjourned to another day. Unless there are special mitigating circumstances that prevent attendance at the re-arranged hearing, it may take place in the employee's absence. The person accompanying the employee may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee may also be allowed to make written submissions in such a situation.
- 6.20.** If the person accompanying the employee cannot attend on the planned date, the meeting shall be rearranged to take place on a date which is suitable but usually no longer than 5 days of the original date, or longer if mutually agreed.

Conduct of the disciplinary hearing

- 6.21.** A disciplinary hearing will normally be conducted by a suitable senior manager together with an appropriate person to take notes (the panel). Wherever possible the manager who undertook the investigation will not be a member of the panel, but they may present any supporting facts and material to the disciplinary hearing. The employee will be entitled to be given a full explanation of the case against them and be informed of the content of any statements provided by witnesses.
- 6.22.** The employee, or any person acting on behalf of, or accompanying the employee is **not** normally permitted to record electronically or by any audio means, **any** meeting held by the Company as part of the disciplinary process, this provision also extends to investigation meetings. This is to encourage openness and full participation by all parties during

meetings. Any breach of this provision may lead to disciplinary action against the employee, up to and including dismissal.

- 6.23.** In certain limited circumstances, the Company may permit the meeting to be recorded. For example, where the employee is disabled it may be a reasonable adjustment under the Equality Act 2010. Where the Company permits recording in this event, it will take the responsibility for the recording.
- 6.24.** The employee will be entitled to state their case in response to the manager's case and put forward an explanation of their conduct and/or mitigating factors.
- 6.25.** The panel may adjourn the disciplinary proceedings if it appears necessary or desirable to do so (including for the purpose of gathering further information). The employee will be informed of the period of any adjournment. If further information is gathered, the employee will be allowed a reasonable period of time, together with their companion, to consider the new information prior to the reconvening of the disciplinary proceedings. The employee may also adjourn the meeting if they require a break or to confer with their companion.
- 6.26.** As soon as possible after the conclusion of the disciplinary proceedings, the manager leading the hearing will inform the employee of the panel's decision and will also inform the employee what disciplinary action, if any, is to be taken. The decision will be confirmed in writing. The employee will be notified of their right of appeal under this procedure.

7. Disciplinary action

- 7.1.** Where, following investigation and a disciplinary hearing, the Company establishes that the employee has committed a disciplinary offence, the following formal disciplinary action may be taken:

Stage 1 – First Written Warning

- 7.2.** Where it is found that conduct does not meet the required standard, a first warning may be given. The employee shall be informed that the warning will remain 'live' for a period of six (6) months. During this period, the Company may rely on such a warning in the event of further misconduct on the part of the employee. The written confirmation will:
- set out the nature of the misconduct;
 - inform the employee that further misconduct is liable to result in further disciplinary action under this procedure;
 - state that the employee may appeal against the warning within seven (7) days, and
 - specify that the warning will remain 'live' for a period of six (6) months (or longer in exceptional circumstances)

Stage 2 – Final Written Warning

- 7.3.** Where either more serious misconduct has occurred or, where there have been further minor offences (of a similar or different nature) by an employee following a Stage 1 warning that remains 'live', the employee will receive a Stage 2,

final written warning. This warning will remain 'live' for disciplinary purposes for twelve (12) months (or longer in exceptional circumstances).

7.4. This written confirmation will:

- set out the nature of the misconduct;
- inform the employee that further misconduct is liable to result in further disciplinary action under this procedure which could result in dismissal;
- state that the employee may appeal against the warning within seven (7) days, and
- specify that the warning will remain 'live' for a period of twelve (12) months (or longer in exceptional circumstances).

Stage 3 – Dismissal

7.5. Where the employee is found to have committed further acts of misconduct (these being acts of misconduct other than gross misconduct) following a previous Stage 2 - final written warning, the employee may be dismissed with notice or with pay in lieu of notice.

7.6. Where the Company establishes that an employee has committed an act of gross misconduct, the employee may be summarily dismissed.

7.7. Where the Company establishes that an employee cannot continue to work in the position they hold without contravention (either on their part or on that of the Company) of a duty or restriction imposed by or under an enactment, the employee may be dismissed with notice or with payment in lieu of notice.

Action short of dismissal

7.8. In exceptional circumstances where following investigation it is found that a serious disciplinary offence has been committed, justifying dismissal or, where dismissal is justified due to further misconduct following previous existing

warnings, the Company may decide, after considering all relevant circumstances, that a lesser penalty is appropriate. Where this is the case, the lesser sanction shall be specified by the Company. The lesser sanction may be:

- Disciplinary suspension without pay;
- demotion; or
- transfer to a different job of a lower status

7.9. These options should always be discussed with HR.

Gross misconduct

7.10. Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and Cambian. In the event that an employee commits an act of gross misconduct, the Company will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice.

7.11. Matters that the Company views as amounting to gross misconduct include (but are not limited to):

- stealing from students/residents/service users/patients, the Company, members of staff or the public;
- other offences of dishonesty;
- falsification of a qualification that is a stated requirement of the employee's employment or results in financial gain to the employee;
- falsification of records, reports, accounts, expense claims or self-certification forms whether or not for personal gain;
- sexual misconduct at work;
- fighting with or physical assault on students/residents/service users/patients, members of staff or the public;
- any form of abuse;
- deliberate or serious damage to or misuse of the Company's property;
- drunkenness or being under the influence of illegal drugs whilst at work;
- possession, custody or control of illegal drugs on the Company's premises;
- serious breach of the Company's rules, including, but not restricted to, health and safety rules and rules on computer use including breach of general data protection regulations;
- gross negligence;
- conviction of a criminal offence that is relevant to the employee's employment;
- conduct that brings the Company's name into disrepute;
- discrimination or harassment of a fellow worker on the grounds of a protected characteristic.
- failure to report concerns of a safeguarding nature via the appropriate channels and in a timely manner.

7.12. Other acts of misconduct may come within the general definition of gross misconduct.

7.13. Subject to the nature of the offence, and particularly for cases that constitute safeguarding, it may be necessary for the Company to make a referral to the Disclosure Barring Service, and/or the Teaching Regulation Agency (TRA). This decision will be made by a senior Operations Manager, and the employee will be notified of this decision in writing.

- 7.14.** Once the referral has been made to the DBS, the DBS will consider whether to bar the person. Once the referral has been made to the TRA, the TRA will consider whether to prohibit the individual from teaching. Detailed guidance and further information on both processes can be found on GOV.UK.
- 7.15.** Referrals will be made as soon as possible and ordinarily on conclusion of an investigation, when an individual is removed from regulated activity (removal from regulated activity is not a necessary criterion to refer). This could include when an individual is suspended, redeployed to work that is not regulated activity, dismissed or when they have resigned. The Company will ensure that a thorough investigation has been conducted and that there is sufficient information to meet the referral duty criteria explained in the DBS referral guidance, which can be found on GOV.UK.

Appeal

- 7.16.** An employee who wishes to appeal, should do so to the person named in the disciplinary outcome letter within 7 days of receipt of the letter.
- 7.17.** The Company will appoint an independent appeal manager of an appropriate level who will hear the appeal and decide the case impartially. The appeal manager will consider any representations made by the employee, the employee's companion, and those of the manager who conducted the investigation and the manager who chaired the disciplinary hearing and imposed the disciplinary sanction.
- 7.18.** Once the relevant issues have been thoroughly explored, the appeal manager will decide whether or not to uphold the disciplinary sanction or find in favour of the employee.
- 7.19.** In the event that the appeal manager partially finds in favour of the employee, they shall partially uphold the appeal and impose a lesser or alternative sanction.
- 7.20.** Upon completion of the appeal, the decision will be confirmed in writing, this decision is final.
- 7.21.** This procedure will be reviewed periodically. Employees will be advised of any amendment to it and the date when any amendment comes into effect.

8. Standard Forms, Letters and Relevant Documents

- 8.1.** GHR 27.01 - Disciplinary Flowchart
- 8.2.** GHR 27.02 - Disciplinary Managers Guide
- 8.3.** GHR 27.13 - Management Investigation report template
- 8.4.** GHR 27.15- Suspension Script
- 8.5.** GHR 27.16 – Suspension Guidance