

Policy and Procedure: Disciplinary Procedure

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Red Balloon Educational Trust's Vision and Core Values

Red Balloon Educational Trust (RBET) provides a robust programme of academic education, wellbeing and therapy, and social re-engagement for young people aged 11–21 who are out of school due to bullying, trauma and/or mental ill-health. The overall aims of the Red Balloon Learner Centres are that students will regain their self-esteem, get back on an academic track, and return to mainstream education, and that the staff are given opportunities for personal and professional development.

Our Vision

To provide the Red Balloon Recovery Programme to more of the young people who self-exclude from school; to employ well-trained employees to support that programme.

Our Values

- Inclusivity
- Negotiating the Curriculum
- Student Voice
- Unconditional Positive Regard

RBET fully supports the independence and distinguishing characteristics of its Learner Centres, each of which is committed to the aims and values of Red Balloon whilst adhering to those of its own.

This document is for your guidance only and should not be regarded as a substitute for taking professional advice.

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RBET is committed to supporting its Learner Centres for the benefit of the communities that they serve. RBET expects the Centres to work together and provides a strong, responsible foundation enabling them to develop and grow, offering the best possible learning experiences for their students.

Red Balloon is committed to supporting the Provisions within Red Balloon for the benefit of the communities served by the Provisions. Red Balloon expects the Provisions to work together.

Red Balloon provides a strong, responsible foundation enabling our Provisions develop and grow. Red Balloon is a trustworthy, reliable and inspirational organisation, delivering the best possible learning experiences.

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1. Introduction

The main purpose of the disciplinary policy is to encourage an employee whose standard of work or conduct is unsatisfactory to improve. The procedure serves to ensure that this is done in a fair and consistent manner.

The disciplinary procedure is not contractual and may be varied by the Trust. The Trust expressly reserves the right to depart from the terms of the disciplinary procedure in circumstances where the employee does not have two years' qualifying service.

2. Data Protection

Red Balloon Educational Trust is the data controller for any personal and/or sensitive data provided as part of this policy unless otherwise stated. The information you provide will be held securely by us and/or our data processors whether the information is in electronic or physical format, in line with the Trust's Privacy Notice, Data Protection Policy and Information Security Policy. If you have any queries regarding how we handle your information or this policy, please contact the Trust's DPO.

The disciplinary procedure is strictly confidential and all aspects including all documentation and records shall be treated as such.

- In minor cases of alleged misconduct, the manager should initially seek to resolve the matter informally by discussion with the employee.
- The disciplinary procedure is to be used where an employee's work or conduct is alleged to be unsatisfactory.
- Each step and action under the procedure must be taken without unreasonable delay by either the Trust or the employee.
- The timing and location of meetings must be reasonable.

3. Powers

The Trust has delegated the following powers to the following levels (or above) of staff:

Sanction	Disciplinary Officer	Appeal Officer
Level 1 – A first warning	Deputy Head / Head of Centre	Head of Centre / Chair of Governors
Level 2 – A written warning	Deputy Head / Head of Centre	Head of Centre / Chair of Governors
Level 3 – A final warning	Head of Centre/Chair of Governors / Nominated Governing Panel	Chair of Governors/Chief Executive

Level 4 – Dismissal.	Head of Centre / Chair of Governors / Nominated Governing Panel	Chair of Governors/ Chief Executive / Chair of Trustees / Nominated Trustee Panel
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Where the employee is employed by the Trust at the level of the appointed disciplinary officer, then the next level of management up will ordinarily deal with the matter (e.g. where an allegation is raised regarding an assistant head a Deputy head will ordinarily be the Disciplinary Officer, and the Head will ordinarily be the Appeal Officer).

For allegations regarding a Head of Centre, a director or member of the Chief Executive at Trust level shall have the authority to be the Disciplinary Officer and a nominated Trustee or Trustees will hear the Appeal. For allegations regarding the Chief Executive, a nominated Trustee or Trustees will have the authority to be the Disciplinary Officer, and any appeal will be to another nominated Trustee or Trustees.

In a case where the person who would normally be the disciplinary officer is compromised by existing circumstances or will need to investigate the matter/be significantly involved in the investigation, or does not have the resource to deal with the matter at that time – the case will normally be dealt with by an alternative at the same level or the next level of management.

- Before any disciplinary decision is made, the employee will be advised of the allegations against them and will be given the opportunity to state their case.
- The employee will be notified in writing of the allegations to be answered (plus any documentary evidence) ahead of any subsequent interview and/or disciplinary hearing.
- The employee must make every effort to attend an investigative interview and/or disciplinary 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 if they are persistently unable to do so (for health reasons, for example), the Trust may have to take a decision based on the available evidence.
- At any disciplinary hearing or appeal hearing the employee will have the right to put forward their case. The Trust will only consider evidence presented by the employee which is relevant to the allegations.
- The Trust shall be entitled to manage the time and resources allocated to a disciplinary matter including managing the time of a disciplinary hearing and allocating time within a disciplinary hearing. This may result in limiting the amount of time allocated to an employee to present their case.
- The decision and the reasons shall be communicated in writing to the employee.
- An employee will be advised of their right of appeal and how to exercise that right.

4. The Right to be Accompanied

The employee may bring a companion to any disciplinary or appeal hearing under this procedure. The companion may be either a trade union representative or a work colleague not involved in the matter. The employee must tell the disciplinary officer who their chosen 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, the Trust may ask for the employee to choose someone else. For example:

- if in the Trust's opinion the employee's companion may have a conflict of interest or may prejudice the hearing; or
- if the companion is unavailable at the time a hearing is scheduled and will not be available for more than 5 working days afterwards.

The Trust may, at its absolute discretion, allow the employee to bring a companion who is not a work colleague or union representative (a family member for example) if this will help the employee overcome a disability.

At a hearing, the companion may make representations to the Trust and ask questions but should not answer questions on the employee's behalf. The employee may confer privately with their companion at any time during a hearing.

5. Trade Union Officials

Although normal disciplinary standards will apply to their conduct and performance as employees, no disciplinary action or suspension will be taken until the circumstances of the case have been discussed with an appropriate full-time TU official if the employee requests it. In the case of suspension, this may not be practical and should not prevent Management taking action.

6. Suspension

In certain circumstances, consideration may be given to suspending the member of staff from their place of work at the outset of the investigation or at any stage during the course of the investigation. The Trust will consider and document why suspension is necessary before making this decision and consider all other alternatives to suspension, where possible.

If suspension is required, it will be for no longer than is necessary and the Trust will confirm the arrangements to the employee in writing following a suspension consideration meeting with the employee.

The decision to suspend may only be taken by a Head of Centre, Chair of Governors or a member of the Trust's senior leadership team.

Where the Head of Centre is suspended, only a member of the Trust's senior leadership team or Chair of Trustees has the power to do so and must notify the full Board of Trustees.

Where a member of the Trust senior leadership team is suspended, only the Chair of Trustees has the power to do so and must notify the full Board of Trustees.

While the employee is suspended, they should not visit the site or contact any of its students, parents, governors, Trustees, charity volunteers/ members or colleagues, unless the employee has been authorised to do so by the Head of Centre / Chair of Trustees.

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 their salary during the period of suspension.

Every effort will be made to avoid lengthy periods of suspension. The decision to suspend and the conditions of suspension will be reviewed periodically, and the employee will be updated as and when necessary.

7. Investigations

The purpose of an investigation is for the Trust to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee 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 relevant witnesses, and/or reviewing relevant documents.

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.

An employee does not have the right to bring a companion to an investigative interview. However, the Trust may in its absolute discretion allow an employee to bring a companion if it helps the employee to overcome a disability or in exceptional circumstances.

The employee must co-operate fully and promptly in any investigation. This will include informing the Trust of the names of any relevant witnesses, disclosing any relevant documents to the Trust and attending investigative interviews if required. A failure to comply may lead to disciplinary action.

It is incumbent on the employee, during the investigation stage, to raise details of additional witnesses whom the Trust should interview during the investigation.

8. Criminal Charges

Where the employee's conduct is the subject of a criminal investigation, charge or conviction the Trust will investigate the facts before deciding whether to take formal disciplinary action.

The Trust 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, the Trust 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 the Trust considers that it is relevant to the employee's employment.

Advice should be sought from the LADO.

9. Procedure at Disciplinary Hearings

At the beginning of the hearing, the disciplinary officer will introduce those present and state the purpose of the meeting. The employee will be reminded of their right to be accompanied (if they employee has not already chosen to be accompanied by a trade union representative or a work colleague).

The disciplinary officer will go through the allegations against the employee and the evidence that has been gathered. The employee will be able to respond and present any relevant evidence.

Witness evidence (save for additional matters that the employee wishes to raise) is provided through witness statements. There is no right for either the Trust or the employee to call witnesses to the disciplinary hearing. This may be considered in exceptional circumstances and is at the discretion of the Chair of the hearing to determine if they feel calling witnesses is appropriate or necessary. As such, there is no power for the Trust or the employee to cross-examine witnesses (albeit that the disciplinary officer may ask questions of the employee).

Should the employee wish to question the evidence provided by another witness in the investigation then this should be raised by the employee during the investigation or upon receipt of the investigation documents.

The employee will be given a full opportunity to ask questions and put forward any mitigating factors which they believe are relevant to the allegations.

Once the employee has been afforded an opportunity to explain their position, the disciplinary officer will either:

- give the decision and explain the reasons for the decision, and confirm as soon as possible in writing; or
- inform the employee that the decision will be given in writing as soon as possible.

The disciplinary officer may adjourn the disciplinary hearing if the Trust needs 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 and comments on any new information obtained before a decision is given.

10. Levels of Disciplinary Action

There are four stages of disciplinary action, each of which is designed to cover the varying seriousness of the cases. The stages give a proper sequence for persistent cases. Where the case is of sufficient importance or seriousness for the procedure to be used, disciplinary action will be taken at whatever stage appears appropriate to the circumstances.

No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty may be dismissal without notice and without pay in lieu of notice.

The following decisions will be confirmed in writing: –

The decision to issue no warning

Level 1 – A first warning may be given where the case is of sufficient importance or seriousness to bring to the attention of the employee formally. The time limit shall be 6 months (excluding the Summer Break) from the date of the decision.

Level 2 – A written warning may be given where the case has already involved a first warning and insufficient improvement has been made, where further misconduct has occurred, or where the case is of sufficient importance or seriousness. The time limit shall be 9 months (excluding the Summer Break) from the date of the decision.

Level 3 – A final warning may be given where the case has already involved a written warning and insufficient improvement has been made, where further misconduct has occurred or where the case is of sufficient importance or seriousness. Also, where gross misconduct may not warrant dismissal, due to mitigating circumstances for example. The time limit shall be 12 months (excluding the summer break) from the date of the decision. However, in exceptional circumstances misconduct may be so serious that if repeated at any time in the future the likely consequence is dismissal. The person or persons making the decision may impose a final written warning and specify that such a warning will remain in force for a longer period of time.

Level 4 – Dismissal. An employee is likely to be dismissed where the case has already involved the final warning and insufficient improvement has been made, or where further misconduct has occurred, or where the case is so serious as to constitute gross misconduct, or where there is some other substantial reason.

11. Alternatives to Dismissal

In some cases, the Trust may at its discretion consider alternatives to dismissal. These 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 future pay increment.

12. The Decision Letter

A letter detailing the decision will be given to the employee and a copy placed on their personnel file if a warning is issued.

Following the outcome of the hearing the decision letter will state: -

- The decision (e.g. that there is no case to answer or the findings and the appropriate level of disciplinary sanction).
- The reason for the decision.
- The course of action to be followed by the employee.
- Time scale in which improvement is required, if applicable.
- Where assistance is required, the assistance which will be made available to the employee (e.g., training and guidance).
- The date on which the warning will elapse.
- That further disciplinary action will be considered if there is further misconduct or insufficient improvement within the timescale of the warning.
- The right of appeal against the decision and how to exercise that right.
- **If the warning is a final warning** it will also state that if the employee's conduct continues to be unsatisfactory or if there is further misconduct it may lead to dismissal.

13. Time Limit for Warnings on File

Breaches of discipline will be disregarded after the specified period of satisfactory conduct but will remain permanently on the employee's personnel file.

14. Right of Appeal

All employees have the right of appeal.

Appeals must be lodged in writing to the designated appeal officer within five working days of the decision being communicated to the employee (i.e., usually within five days of the date of the outcome letter).

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 of pay.

If the employee raises any new matters in their appeal, the appeal officer may need to carry out further investigation. If any new information comes to light the appeal officer will provide the employee with 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.

The Trust will give the employee written notice of the date, time, and place of the appeal hearing.

The appeal hearing may be a complete re-hearing of the matter, or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at the Trust's discretion depending on the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.

Where possible, the appeal hearing will be conducted impartially by a more senior manager who has not been previously involved in the case. The employee may bring a companion to the appeal hearing.

The appeal officer may adjourn the appeal hearing if the Trust 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 a decision is given.

The appeal officer may:

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

The appeal officer will inform the employee in writing of the final decision as soon as possible.

There will be no further right of appeal.

15. Referring Teacher Misconduct to the NCTL

Allegations of serious professional misconduct by a teacher may be referred to the National College for Teaching and Leadership. A referral is appropriate if the alleged misconduct is so serious that it warrants a decision on whether a teacher should be prevented from teaching. Further guidance on referrals is available from [this DfE link](#).