

THOMAS MILLS HIGH SCHOOL & SIXTH FORM



POLICY DOCUMENT 7

DISCIPLINARY, CAPABILITY AND GRIEVANCE PROCEDURES

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Vision Statement

'Together we aim high, discover talents, and build a brighter future'

Thomas Mills High School is an Academy and a company limited by guarantee incorporated in England & Wales under number 7605059

Disciplinary, Capability, and Grievance Procedures

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Section A

Disciplinary Procedure

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1. Policy statement

- 1.1 The aims of this Disciplinary Procedure and its associated Disciplinary Rules are to set out the standards of conduct expected of all staff and to provide a framework within which Thomas Mills High School can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary.
- 1.2 It is the Trust's policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond before taking any formal action.
- 1.3 This procedure does not form part of any employee's contract of employment and it may be amended at any time following consultation. We may also vary application of this procedure, including any time scales for action, as appropriate.
- 1.4 The policy has been formally adopted by the Trust.

2. Scope and purpose of policy

- 2.1 The procedure applies to all employees regardless of length of service excluding those in their probationary period where separate arrangements apply. It does not apply to supply staff, contractors or volunteers. Further information can be found in the Allegations and Concerns Raised in Relation to Staff, Supply Staff, Contractors and Volunteers Policy.
- 2.2 This procedure is used to deal with misconduct. It does not apply to cases involving genuine sickness absence, proposed redundancies or poor performance. In those cases, reference should be made to the appropriate policy or procedure in the Staff Handbook.
- 2.3 Minor conduct issues can often be resolved informally between employees and their line manager. These discussions should be held in private and without undue delay whenever there is cause for concern. Where appropriate, a note of any such informal discussions may be placed on the employee's personnel file. In some cases, an informal verbal warning or instruction may be given, which will not form part of the disciplinary records but may be referred to as part of any future disciplinary proceedings where appropriate. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).
- 2.4 Employees will not normally be dismissed for a first act of misconduct, unless the School decides that the conduct amounts to gross misconduct or the employee has not completed a probationary period.
- 2.5 As recognisable figures in the local community the behaviour and conduct of staff in the School outside of work can impact on their employment particularly if it may make an individual unsuitable to work with children. This is known as a transferable risk. Therefore, conduct outside work may be treated as a disciplinary matter if it is considered that it is relevant to the employee's employment (see disciplinary rules).

- 2.6 We offer access to confidential counselling should you require it, which is available on request. The details to access this service are in the Staff Handbook.

3. Confidentiality and data protection

- 3.1 It is the aim of the school to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat any information communicated to them in connection with an investigation or disciplinary matter as confidential during or after an investigation into an allegation
- 3.2 A breach of confidentiality will be taken seriously and may warrant its own investigation.
- 3.3 Employees, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.
- 3.4 Employees will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against them, unless there is good reason that a witness's identity should remain confidential.
- 3.5 The amended Education Act 2002 introduced reporting restrictions, in respect of any allegations made against a teacher, preventing the publication of any material that may lead to the identification of a teacher in a school who has been accused by or on behalf of, a pupil from the same school. This applies to parents and carers as well as the press. If for any reason Schools/Academies/Trusts need to make parents aware of any allegations they should equally make them and others aware there are restrictions on publishing information.
- 3.6 During informal action, formal investigation and any subsequent stages of the procedure, the school will collect, process and store personal data in accordance with our data protection policy. The data will be held securely and accessed by, and disclosed to, individuals only for the purposes of completing the disciplinary procedure. Records will be kept in accordance with our Retention and Destruction Policy and in line with the requirements of **Data Protection Legislation** (being the UK General Data Protection Regulation and the Data Protection Act 2018) and any implementing laws, regulations and secondary legislation, as amended or updated from time to time. Any breach of data protection may constitute a disciplinary offence and be dealt with under this procedure.

4. Allegations

- 4.1 Allegations may be brought to the school's attention in a number of ways and through a variety of sources. Appendix 1 sets out the disciplinary rules. As with disclosures made by children and young people, adults need to be aware that in making an allegation or raising a concern it is not always possible to keep the matter confidential. The Head Teacher will need to decide upon the most appropriate course of action and may choose to proceed with an investigation even if the person making the allegation does not want them to.
- 4.2 Allegations which involve issues of child protection and/or abuse of children by staff should be referred immediately to the Designated Officer of the Local Authority. See the Allegations of

Abuse Against Staff Policy for further guidance on the management of this type of allegation. No further action under this procedure will usually be taken until the Local Authority Designated Officer (LADO) has been consulted.

5. Investigations

5.1 Preliminary investigation

- 5.1.1 Upon receiving any allegations against employees, it is likely that further information will be required to establish what the next course of action should be. The Head Teacher should seek to establish the basic facts of the situation; this may involve looking at records, speaking to witnesses, reviewing CCTV etc.
- 5.1.2 A preliminary investigation meeting may be held with the employee to establish the basic facts of the circumstance and to enable the Head Teacher to determine whether further investigation is required. Such a meeting can sometimes give a reasonable explanation in response to allegations which then enables the matter to be concluded. A preliminary meeting will not be required in all cases and it is for the Head Teacher to decide if this is appropriate.

5.2 Further investigation

- 5.2.1 After a preliminary investigation where it is determined that there is a need for investigation, or if the concerns are serious enough to warrant a full investigation immediately, the Head Teacher will usually appoint an Investigating Officer to carry out the investigation. This will be an appropriate person to the nature of the allegations and the role of the employee. In the case of allegations made against the Head Teacher the Chair of Trustees will be responsible for the management of the procedure and determining an appropriate investigating officer, either internally or externally.
- 5.2.2 The purpose of an investigation is to establish a fair and balanced view of the facts relating to any disciplinary allegations made 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 witnesses, and/or reviewing relevant documents and other information.
- 5.2.3 It may be necessary to interview witnesses who may have information that is relevant to the allegations. A record of the meeting will be made, and the witness will have the opportunity to review the record, make amendments for clarification purposes and sign and date the record. The School recognises that some employees may find this difficult or worrying, however all employees are expected to fully participate in any such investigation.
- 5.2.4 Investigation meetings are solely for the purpose of fact-finding and no decision on formal disciplinary action will be taken until after a disciplinary hearing has been held. A record of the meeting will be made, and the employee will have the opportunity to

review the record, make amendments for clarification purposes and sign and date the record.

- 5.2.5 Employees must co-operate fully and promptly in any investigation. This will include providing the names of any relevant witnesses, disclosing any relevant documents or information and attending investigative interviews if required. As each investigation will vary in length and complexity it will be completed in as short a time frame as possible.

6. Criminal charges

- 6.1 Where conduct is the subject of a criminal investigation, arrest, charge or conviction the facts will be investigated before deciding whether to take formal disciplinary action. Disciplinary action will not be automatic and will depend upon the circumstances. Employees should inform the Head Teacher immediately if they are involved in a criminal investigation, arrest, or are subject to a charge or conviction. Failure to notify their line manager may result in disciplinary action.
- 6.2 The School will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where employees are unable or have been advised not to attend an investigation meeting or disciplinary hearing or say anything about a pending criminal matter, a decision may have to be made based on the available evidence.
- 6.3 A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if it is considered that it is relevant to the employee's employment.
- 6.4 Where a criminal investigation relates to allegations of abuse of children or young people the School will co-operate and share information about the employee with other relevant agencies as appropriate following advice from the Local Authority Designated Officer (LADO).

7. Suspension

- 7.1 In some circumstances it may be necessary to suspend the employee from work, in particular where there are either reasonable grounds to suspect a member of staff, child or other children at the School are at risk of harm or the case is so serious that it might be grounds for dismissal. The suspension will be for no longer than is necessary to investigate the allegations and conclude the disciplinary process. The arrangements and the reasons for suspension will be confirmed to the employee in writing as soon as possible or within one working day if in relation to a safeguarding concern or allegation.
- 7.2 Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. Employees will continue to receive normal salary and benefits during the period of suspension and be provided with an appropriate named contact within the School who will provide welfare support.
- 7.3 Alternatives to suspension, for example re-organisation of duties, work location, temporary redeployment to another role, providing an assistant to be present when the individual has

contact with students, moving the student/s to a different class where they will not come into contact with the member of staff etc. will be explored where relevant before a decision to suspend is made. The School should be as inventive as possible when considering alternative options to suspension. The nature and severity of the allegations will need to be considered as well as the employee's role and if their continued presence would result in potential harm to the organisation or others, or make it difficult to investigate.

- 7.4 Where allegations are made that involve the protection of children, suspension will not be considered to be automatic. A reasoned decision will be made based on all available information in consultation with the Local Authority Designated Officer (LADO), including the views of the police and social care if appropriate.
- 7.5 The suspension will be kept under review as the investigation progresses. As information is gathered it may become appropriate to lift the suspension during the course of the investigation or prior to any disciplinary hearing.
- 7.6 The School will not prevent social contact with work colleagues and friends during the suspension unless there is evidence to suggest this may prejudice the gathering of evidence.
- 7.7 The decision to suspend an employee will be made by the Head Teacher.
- 7.8 The School has no authority or power to suspend a member of agency staff where an allegation is made against them. Instead the School will cease to use the services of that member of agency staff or self-employed contractor but not without first finding out the facts and liaising with the LADO to determine a suitable outcome.

8. Disciplinary hearing

- 8.1 Following any investigation, if there are grounds for disciplinary action, the employee will be required to attend a disciplinary hearing. The employee will be informed in writing of the allegations against them, the basis for those allegations, and what the likely range of consequences will be if it is decided at the hearing that the allegations are true. The following will also be included where appropriate:
 - 8.1.1 a summary of relevant information gathered during the investigation;
 - 8.1.2 a copy of any relevant documents which will be used at the disciplinary hearing; and
 - 8.1.3 a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case as much information as possible will be provided while maintaining confidentiality.
- 8.2 The Head Teacher will be responsible for ensuring that all of the arrangements for the hearing are made and that the employee receives the appropriate paperwork and notice of the hearing.
- 8.3 Five working days written notice of the date, time and place of the disciplinary hearing will be given to provide the employee with a reasonable amount of time to prepare their case based on

the information that they have been provided with. The hearing will be arranged as soon as is practicably possible.

- 8.4 If the employee and/or their companion cannot attend the hearing they should inform the Head Teacher immediately and consideration will be given to arranging an alternative time. Employees must make every effort to attend the hearing and failure to attend without good reason may be treated as misconduct in itself. Failure to attend without good reason, or persistent inability to do so (for example for health reasons), may lead to a decision being taken based on the available evidence.
- 8.5 If the employee chooses not to attend the hearing, they may choose to send a written statement for consideration at the hearing or their trade union representative may attend on their behalf.

9. Role of Companion at Meetings and Hearings

- 9.1 An employee may bring a companion to any hearing or appeal where a formal warning may be issued, or dismissal may be a potential outcome. The companion may be either an official trade union representative or a work colleague. The employee must inform the Head Teacher conducting the meetings who their chosen companion is, in good time before the hearing. In addition, whilst employees do not normally have the right to bring a companion to an investigation meeting, employees are allowed to bring an official trade union representative or work colleague to the investigation meeting if one is available. No rearrangements will be made to the time and date of the investigation meeting to enable a companion to attend.
- 9.2 Should the employee choose to bring a companion to the hearing they will be responsible for making these arrangements and for providing their companion with any paperwork that they require for the hearing.
- 9.3 Acting as a companion is voluntary and colleagues are under no obligation to do so. If they agree to do so they will be allowed reasonable time off from duties without loss of pay to act as a companion.
- 9.4 If the choice of companion is not available at the time a hearing or appeal is scheduled, the employee may propose an alternative time for the hearing or appeal to take place and so long as the alternative time is reasonable and within five working days after the original scheduled date, we will postpone. If the employee's chosen companion will not be available for more than five working days afterwards, we may ask the employee to choose someone else.
- 9.5 A companion may make representations, ask questions, and sum up the employee's position, but will not be allowed to answer questions on the employee's behalf. The employee may confer privately with their companion at any time during a meeting.
- 9.6 We may, at our discretion, allow the employee to bring a companion who is not a colleague or union representative (for example, a member of family) as a reasonable adjustment if the employee has a disability.

10. Procedure at disciplinary hearings

- 10.1 The hearing will be chaired by the Head Teacher or a panel of Trustees. The Investigating Officer will also normally attend to present the investigation. A School's Representative may also be present.
- 10.2 At the disciplinary hearing the Investigating Officer will go through the allegations against the employee and the evidence that has been gathered. The employee (or their companion on their behalf) will be able to respond and present any evidence of their own. A format for a disciplinary hearing is attached at Appendix 2.
- 10.3 Relevant witnesses may be asked by the Investigating Officer or the employee to appear at the hearing. The employee must give sufficient advance notice if they wish to call witnesses to ensure that there is time to arrange their attendance. The employee will be given the opportunity to respond to any information given by a witness. However, the employee will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, the Chair decides that a fair hearing could not be held otherwise.
- 10.4 The Chair may adjourn the disciplinary hearing if there is a need to carry out any further investigations such as re-interviewing witnesses in the light of any new points that have been raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 10.5 The employee will be informed in writing of the decision and the reasons for it, usually within 5 working days of the disciplinary hearing. Where possible this information will also be explained to the employee in person.

11. Disciplinary penalties

- 11.1 The Head Teacher or panel may find that there is no case to answer and may refer the case back to an informal process. Alternatively, the Head Teacher or panel may give the employee a disciplinary warning or dismiss them.
- 11.2 The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. The School aims to treat all employees fairly and consistently, and a penalty imposed on another employee for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.

First written warning

- 11.3 A first written warning will usually be appropriate for a first act of misconduct where there are no other active written warnings on the employee's disciplinary record.
- 11.4 A first written warning will usually remain active for twelve months.

Final written warning

- 11.5 A final written warning will usually be appropriate for:
misconduct where there is already an active written warning on the employee's record; or
misconduct that is considered sufficiently serious to warrant a final written warning even though there are no other active warnings on the record.
- 11.6 A final written warning will usually remain active for 12 months however, in very serious matters a final written warning may be given a period longer than 12 months but no more than 24 months.

The duration and effect of a warning

- 11.7 Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period.
- 11.8 Warnings may be live for a longer period than specified above depending on the seriousness of the misconduct and the wider circumstances of the case. The conduct will be reviewed at the end of a warning's active period and if it has not improved sufficiently the active period may be extended.
- 11.9 After the active period, the warning will remain permanently on the employee's personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

Dismissal

- 11.10 Dismissal will usually only be appropriate for:
- 11.10.1 any misconduct during the probationary period;
 - 11.10.2 further misconduct where there is an active final written warning on the record; or
 - 11.10.3 any gross misconduct regardless of whether there are active warnings on the record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal).

12. Appeals against disciplinary action

- 12.1 The employee has the right to appeal against the disciplinary action taken against them. This must be in writing, stating the full grounds of appeal and sent to the Head Teacher within 5 working days of the date on which the employee was informed of the decision.
- 12.2 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 they will be reinstated with no loss of continuity or pay.

- 12.3 If any new matters are raised in the appeal hearing further investigation may need to be carried out. The Chair may adjourn the appeal hearing if there is a need to carry out any further investigations such as re-interviewing witnesses in the light of any new points that have been raised at the hearing. If any new information comes to light this will be provided to 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 is reconvened.
- 12.4 The employee must be given written notice of the date, time and place of the appeal hearing. This will normally be no less than two to seven working days. The employee may bring a companion to the appeal hearing (see paragraph 9).
- 12.5 Where possible, the appeal hearing will be conducted by a senior manager /different panel of Governors not been previously involved in the case. The hearing may be a complete re-hearing (which would follow the format for hearings at Appendix 3) 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 (in which case the format would be reversed so that the appellant would present their appeal first). This will be at the Head Teacher's discretion depending on the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.
- 12.6 Following the appeal hearing the Head Teacher or panel may:
- 12.6.1 confirm the original decision;
 - 12.6.2 revoke the original decision; or
 - 12.6.3 substitute a different penalty. Ordinarily a penalty will not be increased on appeal unless there is new information or evidence being available that requires further investigation
- 12.7 The employee will be informed in writing of the decision and the reasons for it, usually within 5 working days of the appeal hearing. Where possible this information will also be explained to the employee in person. There is no further right to appeal.

13. Referrals to external bodies

In cases where employees in regulated activity are dismissed, or removed due to safeguarding concerns or would have done had they not resigned during a disciplinary process, a referral should be made as soon as possible to the Disclosure and Barring Service (all staff) and Secretary of State (teachers only), where the thresholds for referral are met. This could also include when an individual is suspended and redeployed into work that is not regulated activity. A failure to do so when the criteria is met is a criminal offence.

14. Review of policy

This policy is reviewed and amended annually by the Trustees in consultation with the recognised trade unions. We will monitor the application and outcomes of this policy to ensure it is working effectively.

Appendix 1 Disciplinary rules

1. Policy statement

- 1.1 The aim of the Disciplinary Rules and Disciplinary Procedure is to set out the standards of conduct expected of all staff and to provide a framework within which the Head Teacher and line managers can work with staff to maintain those standards and encourage improvement where necessary.
- 1.2 If any employee is in any doubt as to their responsibilities or the standards of conduct expected they should speak to their line manager.

2. Rules of conduct

- 2.1 While working for the School you should at all times maintain professional and responsible standards of conduct. In particular you should:
 - 2.1.1 observe the terms and conditions of your contract, particularly with regard to:
 - (a) hours of work;
 - (b) confidentiality;
 - 2.1.2 ensure that you understand and follow our Code of Conduct;
 - 2.1.3 observe all of the Trust's policies, procedures and regulations including those which are included in the Staff Handbook or notified to you from time to time by means of bulletin, briefings, notice boards, e-mail, the intranet or otherwise;
 - 2.1.4 take reasonable care in respect of the health and safety of colleagues, pupils and third parties and comply with our Health and Safety Policy;
 - 2.1.5 comply with all reasonable instructions given by the Head Teacher and managers; and
 - 2.1.6 act at all times in good faith and in the best interests of the School and those of our pupils and staff.
 - 2.1.7 ensure that you never behave in a way, either inside or outside of work, that indicates you may pose a risk of harm to children/not be suitable to work with children
- 2.2 Failure to maintain satisfactory standards of conduct may result in action being taken under the Disciplinary Procedure.

3. Misconduct

- 3.1 The following are examples of matters that will normally be regarded as misconduct and will be dealt with under the Disciplinary Procedure:
- 3.1.1 Minor breaches of the Trust's policies, including the Sickness Absence Policy, Code of Conduct Policy, Email Policy Guidance for Staff, and Health and Safety Policy;
 - 3.1.2 Minor breaches of an employee's contract of employment;
 - 3.1.3 Damage to, or unauthorised use of, the Trust's property;
 - 3.1.4 Poor timekeeping or time wasting;
 - 3.1.5 Unauthorised absence from work;
 - 3.1.6 Refusal to follow instructions;
 - 3.1.7 Excessive use of the Trust's telephones, email or internet usage for personal reasons;
 - 3.1.8 Inappropriate or other offensive behaviour, including using obscene language, victimisation or harassment of other members of staff or pupils;
 - 3.1.9 Negligence in the performance of duties;
 - 3.1.20 Smoking in no-smoking areas, which applies to anything that can be smoked and includes, but is not limited to, cigarettes, electronic cigarettes, pipes (including water pipes such as shisha and hookah pipes), cigars and herbal cigarettes; or

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

4. Gross misconduct

- 4.1 Gross misconduct is a serious breach of contract and includes misconduct which, in the opinion of the School, is likely to prejudice its business or reputation or irreparably damage the working relationship and trust between the School and the employee. Gross misconduct will be dealt with under the Disciplinary Procedure and may lead to dismissal without notice or pay in lieu of notice (summary dismissal).
- 4.2 The following are examples of matters that are normally regarded as gross misconduct:
- 4.2.1 Theft, or unauthorised removal of property or the property of a colleague, contractor, pupil or member of the public;
 - 4.2.2 Fraud, forgery or other dishonesty, including fabrication of expense claims and time sheets, pupil's work, examinations or assessments;
 - 4.2.3 Actual or threatened violence, or behaviour which provokes violence;

- 4.2.4 Deliberate damage to the buildings, fittings, property or equipment of the School, or the property of a colleague, contractor, pupil or member of the public;
- 4.2.5 Inappropriate conduct with children or young people, including failing to maintain appropriate professional boundaries;
- 4.2.6 Serious failure to follow the School's child protection and safeguarding procedures;
- 4.2.7 Behaving in a way, either inside or outside of work, which could cause harm to a child, or could indicate that you pose a risk of harm to children/may not be suitable to work with children
- 4.2.8 Serious misuse of the School's property or name;
- 4.2.9 Deliberately accessing internet sites at work or at home, using School equipment, which contain pornographic, offensive or obscene material;
- 4.2.10 Repeated or serious failure to obey instructions, or any other serious act of insubordination;
- 4.2.11 Bringing the School/Trust into serious disrepute;
- 4.2.12 Being under the influence of alcohol, illegal drugs or other substances during working hours or not being capable of fulfilling your duties because of the effects of alcohol or illegal drugs or other substances.
- 4.2.13 Causing loss, damage or injury through serious negligence;
- 4.2.14 Serious or repeated breach of health and safety rules or serious misuse of safety equipment;
- 4.2.15 Unauthorised access, use or disclosure of confidential information or failure to ensure that confidential information in your possession is kept secure;
- 4.2.16 Acceptance of bribes or other secret payments;
- 4.2.17 Conviction or caution for a criminal offence that in the opinion of the School may affect our reputation or our relationships with our staff, pupils, parents or the public, or otherwise affects your suitability to continue to work for us;
- 4.2.18 Possession, use, supply or attempted supply of illegal drugs;
- 4.2.19 Serious neglect of duties, or a serious or deliberate breach of your contract or operating procedures;
- 4.2.20 Unauthorised use, processing or disclosure of personal data contrary to our Data Protection Policy;

- 4.2.21 Harassment of, or discrimination against, employees, pupils, parents or members of the public, related to any of the protected characteristics contrary to our Equal Opportunities Policy or our Anti-harassment and Bullying Policy;
 - 4.2.22 Refusal to disclose any of the information required by your employment or any other information that may have a bearing on the performance of your duties;
 - 4.2.23 Giving false information as to qualifications or entitlement to work (including immigration status);
 - 4.2.24 Making a disclosure of false or misleading information under our Whistleblowing Policy maliciously, for personal gain, or otherwise in bad faith;
 - 4.2.25 Making untrue allegations in bad faith;
 - 4.2.26 Victimising a colleague who has raised concerns, made a complaint or given evidence information under the Whistleblowing policy, Anti-harassment and Bullying policy, Grievance Procedure, Disciplinary Procedure or otherwise;
 - 4.2.27 Serious misuse of our information technology systems (including misuse of developed or licensed software, use of unauthorised software and misuse of email and the internet) contrary to our ICT user policy;
 - 4.2.28 Undertaking unauthorised paid or unpaid employment during your working hours;
 - 4.2.29 Unauthorised entry into an area of the premises to which access is prohibited.
 - 4.2.30 Making covert recordings of colleagues or managers
- 4.3 This list is intended as a guide and is not exhaustive.
- 4.4 In some instances, offences which would normally constitute gross misconduct may be considered as misconduct because of mitigating circumstances. Similarly, issues which would normally be treated as misconduct may, in certain circumstances, be considered so serious that they constitute gross misconduct.

Appendix 2 Format for disciplinary hearing

1. Welcome by chair of panel/hearing officer:
 - ask everyone present to introduce themselves and explain their role
 - explain purpose of hearing
2. Presentation of management case by investigating officer including evidence from management witnesses
3. Questions from employee/representative to investigating officer/witnesses
4. Questions from the hearing officer/panel to the investigating officer/witnesses
5. Presentation of employee's case by employee/representative including evidence from employee's witnesses
6. Questions to employee/witnesses from investigating officer
7. Questions to employee/witnesses from the hearing officer/panel
8. Summing up by investigating officer (no new evidence)
9. Summing up by employee/representative (no new evidence)
10. Hearing adjourned and all parties asked to leave whilst hearing officer/panel consider evidence, make a decision on level of sanction (if appropriate)
11. All parties return and employee advised of hearing officer/panel's decision, (sanction and right of appeal)
12. Notes from the meeting are used to confirm outcome in writing and sent to employee within the timescale set out in the policy

Section B
Capability Procedure

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1. Introduction

- 1.1 Thomas Mills High School is committed to providing high quality teaching and learning. Through our workforce we aim to provide opportunities for all of our pupils, whatever their ability. Each employee will therefore be given support to ensure they are able to develop the skills they need to carry out their role, to help them continually improve their performance and to develop to their full potential, which will in turn help improve outcomes for our young people.
- 1.2 Having an effective performance management process in place is one of the ways we can support our employees and deal with performance matters as they arise. This involves effective day-to-day supervision, carrying out appraisals, providing development opportunities and operating a fair and reasonable capability process.
- 1.3 This policy sets out the arrangements that will apply when an employee falls below the levels of competence and performance that are expected of them and there is serious underperformance which the Appraisal Policy has been unable to address.
- 1.4 This policy has been designed to comply with current legislation and the ACAS Code of Practice on Disciplinary and Grievance Procedures. It complies with the requirement for all schools including academy trusts to have a policy that deals with capability of staff.
- 1.5 The policy has been formally adopted by the governing body.
- 1.6 This policy does not form part of any employee's contract of employment and may be amended at any time.

2. Scope and purpose of this policy

- 2.1 The purpose of this policy is to provide a framework within which Thomas Mills High School can work with employees to improve and maintain satisfactory standards of performance where serious concerns have been raised.
- 2.2 This policy will be applied where there is underperformance, and informal support as set out in the Appraisal Policy has been provided and the required improvement has not been made. The policy also links to the Pay Policy.
- 2.3 This policy applies to all employees of the School, including the headteacher, teachers and support staff, excluding those who are in the probationary period. On successful completion of the probationary period, employees' performance management will be covered by this policy. It does not apply to agency workers.

3. Notification and procedure for formal meetings

- 3.1 An employee will be given at least five working days' written notice to attend any formal meeting under this procedure.
- 3.2 The written notification will also contain:
 - 3.2.1 Sufficient information about the performance concerns and their possible consequences (including the possibility of issuing a warning or dismissal) to enable the employee to prepare to answer the case at the formal meeting.
 - 3.2.2 Copies of any written evidence
 - 3.2.3 Copies of witness statements and details of witnesses attending (if appropriate)
 - 3.2.4 Details of the time and place of the meeting
 - 3.2.5 Your right to be accompanied (see 3.4)
- 3.3 Formal meetings will be conducted by the headteacher or other senior employee delegated this responsibility by the headteacher.
- 3.4 An employee has the right to be accompanied to any formal meeting under this procedure by a companion, who may be a colleague or a trade union representative. Employees are entitled to request an alternative date which is within five days of the original date, if their representative is unable to attend the meeting.
- 3.5 The employee's line manager may attend the meeting to present the management case. Relevant witnesses may be called by the person conducting the meeting. Such a request should be provided in writing at least 2 days prior to the meeting with details of why such a witness should be called. The person conducting the meeting shall determine who shall be called as a witness and may request a written statement is provided instead of attendance.
- 3.6 A formal meeting under this procedure will:
 - 3.6.1 identify performance shortcomings, including which of the standards expected not being met;
 - 3.6.2 allow the employee to respond to those concerns, ask questions and make any relevant representations which may provide new information or a different context to the evidence already collected;
 - 3.6.3 find out if there are any issues (both in and outside of work) that are affecting their performance that need to be considered;
 - 3.6.4 identify what action (including support provided) has been taken to date and what the outcome was

- 3.6.5 give clear guidance on the improved standard of performance needed to ensure the employee can be removed from the formal capability procedure;
 - 3.6.6 where appropriate, identify and explain any support that will be available to help the employee improve performance;
 - 3.6.7 where appropriate, warn the employee formally that failure to improve within the set period could lead to dismissal or other serious implications such as no pay progression; and
 - 3.6.8 confirm the timescales for the monitoring and review period which will follow a formal meeting where a warning is issued. The timetable will depend on the circumstances of the individual case, but the period will be reasonable and proportionate ensuring that the arrangements minimise the impact on workload for all parties involved, and should provide sufficient opportunity for an improvement to be made. Formal monitoring, evaluation, guidance and support will continue during this period.
- 3.7 The person conducting the meeting may adjourn the meeting, for example for further investigation or to consider if additional information is required.
 - 3.8 If at any stage the person conducting the meeting is satisfied that there are insufficient grounds for pursuing the capability issue or after a review period the employee has made sufficient improvement, the capability procedure will cease, and the appraisal process will re-start.
 - 3.9 Following a formal meeting, the matters covered in 3.6 and any other relevant points will be confirmed in writing. Where a warning has been issued the letter will set out the length of the monitoring and review period and the procedure and time limits for appealing against the warning. If under performance occurs again shortly after the end of the live period of the warning, we reserve the right to deal with the matter at the same stage of the procedure and not return to earlier stage (including not returning to the Appraisal policy).
 - 3.10 Notes will be taken of all formal meetings and you will be sent a copy following the meeting.

4. Formal capability meeting (Stage 1)

- 4.1 If we consider that there are serious performance concerns you will be invited to a formal capability meeting to establish the facts and give you the opportunity to respond before formal action is taken.
- 4.2 Where a warning is issued at stage 1, this will usually be a first written warning. However, in very serious cases or in cases where performance issues have been dealt with previously under the formal capability procedure and there are still concerns, this could be a final written warning. The implications in relation to pay progression will be set out in writing.
- 4.3 The warning will normally remain active for six months from the end of the monitoring and review period. During this time any further performance concerns will be considered at the next stage of the process (stage 2). After the active period the warning will remain on your personnel file but will be

disregarded in deciding the outcome of any future capability proceedings, subject to the provision of 3.9 above (not returning to earlier stage).

4.4 Monitoring & Review Period (1)

4.4.1 At the end of the monitoring and review period you will be invited to a formal review meeting, unless you were issued with a final written warning in which case you will be invited to a decision meeting.

5. Formal review meeting (Stage 2)

5.1 If the person conducting the formal review meeting decides that sufficient progress and improvement has been made, then the capability procedure will cease, and the appraisal process will continue.

5.2 If the person conducting the formal review meeting decides that some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period up to a maximum of 4 additional weeks.

5.3 If no, or insufficient improvement has been made during the monitoring and review period, you will receive a final written warning. A further Monitoring and Review Period will follow in accordance with 4.4.

5.4 The warning will normally remain active for six months from the end of the further monitoring and review period. During this time any further performance concerns will be addressed at the next stage of the process (stage 3). After the active period the warning will remain on your personnel file but will be disregarded in deciding the outcome of any future capability proceedings, subject to the provision of 3.9 above (not returning to earlier stage).

5.5 Monitoring & Review Period (2):

5.5.1 At the end of the further monitoring and review period, you will be invited to a decision meeting.

5.5.2 At this stage and by agreement with you, instead of progressing to a decision meeting it may be appropriate to consider whether there is an appropriate vacant post and if so whether this may be more suited to your capabilities. If there is a vacant post which we agree with you is suitable, this would be a permanent change in role and if the alternative post is at a lower salary level, the substantive lower salary would apply. The capability procedure would cease on commencing in the new post and the appraisal process would re-start.

6. Decision meeting (Stage 3)

6.1 The decision meeting will usually be conducted by the headteacher if they have not previously been involved] or a panel of governors not previously involved in the case, which could include the headteacher/principal. Dismissal is a possible outcome of a decision meeting.

- 6.2 If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end, and the appraisal process will re-start.
- 6.3 If performance is deemed to have improved but not reached the required standard a further monitoring and review period can be imposed. There will be a further decision meeting at the end of that extended monitoring and review period.
- 6.4 If performance remains unsatisfactory and of serious concern, a decision will be made that you should be dismissed. Normal delegation rules apply to the power of dismissal.

7. Appeal

- 7.1 If you feel that the decision to dismiss you or other action taken against you (including warnings) is wrong or unjust, you may appeal. You should appeal in writing to the headteacher setting out the grounds for appeal within five working days of the decision.
- 7.2 Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as set out in section 3.
- 7.3 The appeal will be dealt with impartially and, wherever possible, by a panel of three trustees who have not previously been involved in the case in line with the School's arrangements for appeals.
- 7.4 If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if your appeal is successful you will be reinstated with no loss of continuity or pay.
- 7.5 You will be informed in writing of the results of the appeal hearing as soon as possible. Following the appeal hearing the panel may: (a) confirm the original decision; (b) revoke the original decision; or (c) substitute a different penalty.
- 7.6 There is no further right of appeal against the sanction or dismissal within the School.

8. Sickness

- 8.1 If at any stage long term sickness absence appears to have been triggered at any stage of this procedure, the case will be dealt with in accordance with the School's sickness absence policy.
- 8.2 The employee will be referred immediately to the occupational health service to assess their health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

9. General principles underlying this policy

9.1 Confidentiality

The capability process will be treated confidentially. However, it needs to be recognised that, in supporting employees through this process, some degree of information sharing is likely to be necessary to quality-assure the operation and effectiveness of the process.

9.2 Consistency of Treatment and Fairness

Thomas Mills High School and the trustees are committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled employees. The trustees are aware of the guidance on the Equality Act issued by the Department for Education.

9.3 Grievances

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently, and at the same meeting.

9.4 Retention and data protection

The trustees and headteacher will ensure that all written records are retained in a secure place. As part of the application of this policy, the School may collect, process and store personal data in accordance with our data protection policy. We will comply with the requirements of Data Protection Legislation (being the UK General Data Protection Regulation and Data Protection Act 2018) and any implementing laws, regulations and secondary legislation, as amended or updated from time to time. Records will be kept in accordance with the requirements of the **Data Protection Legislation**.

10. Review of policy

This policy is reviewed and where appropriate amended annually by trustees. We will monitor the application and outcomes of this policy to ensure it is working effectively.

Section C

Grievance Procedure

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1. Policy statement

- 1.1 It is the School's policy to ensure that all employees have access to a procedure to help deal with any grievances relating to their employment fairly and without unreasonable delay. Where you make us aware that you have a complaint we will hold a meeting to discuss it with you, carry out any necessary investigation where required, inform you in writing of the outcome, and give you a right of appeal if you are not satisfied.
- 1.2 Issues that may cause grievances include:
 - 1.2.1 terms and conditions of employment;
 - 1.2.2 health and safety;
 - 1.2.3 work relations;
 - 1.2.4 new working practices;
 - 1.2.5 working environment;
 - 1.2.6 organisational change; and
 - 1.2.7 discrimination.
- 1.3 This procedure does not form part of an employee's contract of employment and it may be amended at any time following consultation. The employer may also vary application of this procedure, including any time scales for action, as appropriate.
- 1.4 The policy has been formally adopted by the Trustees.

2. Who is covered by the procedure?

This procedure applies to all employees regardless of length of service. It does not apply to agency workers or self-employed contractors.

3. Using this procedure

- 3.1 Employees should raise matters promptly and without unreasonable delay. The employer will deal with matters in the same way.
- 3.2 Complaints that may amount to an allegation of misconduct on the part of another employee will be investigated in accordance with this procedure and may be referred to and dealt with under the Disciplinary Procedure if appropriate, and you will be informed if this is the case.
- 3.3 This Grievance Procedure should not be used to complain about pay or performance management, dismissal or disciplinary action or the outcomes of other procedures where there will be relevant appeal procedures in place. If you are dissatisfied with any disciplinary action, you should submit an appeal under the Disciplinary Procedure.
- 3.4 Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

- 3.5 There is a separate Anti-harassment and Bullying Policy that may be useful if you believe you have been the victim of bullying or harassment or wish to report an incident of bullying or harassment involving other people.
- 3.6 The employer operates a separate Whistleblowing Policy to enable employees to report illegal activities, wrongdoing or malpractice. However, where you are directly affected by the matter in question, or where you feel you have been victimised for an act of whistleblowing, you may raise the matter under this grievance procedure.
- 3.7 Collective grievances can be made where there are two or more employees with the same grievance. However, issues that are the subject of collective negotiation or consultation with the trade union will not be considered under this procedure.
- 3.8 This procedure should not to be used in situations where the employee simply disagrees with a reasonable management instruction from a manager.
- 3.9 It may be appropriate for the matter to be dealt with by way of mediation, depending on the nature of your grievance. This is an informal process which involves the appointment of a third-party mediator, who will discuss the issues raised by your grievance with all of those involved and seek to facilitate a resolution. Mediation will be used only where all parties involved in the grievance agree.
- 3.10 We offer access to confidential counselling, which is available on request. The details to access this service can be found in the Staff Handbook.

4. Confidentiality and data protection

- 4.1 It is the aim of the School to deal with grievance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat any information communicated to them in connection with grievance matters as confidential.
- 4.2 Employees, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings conducted under this procedure.
- 4.3 During any action, including any decisions taken under this procedure, the School will collect, process and store personal data in accordance with our data protection policy. The data will be held securely and accessed by, and disclosed to, individuals only for the purposes of completing the grievance procedure. Records will be kept in accordance with the requirements of **Data Protection Legislation** (being the UK General Data Protection Regulation and the Data Protection Act 2018) and any implementing laws, regulations and secondary legislation, as amended or updated from time to time.

5. Low level concerns/Unsafe working practices

All staff are encouraged to report complaints that amount to low level concerns. Low level concerns are defined as any concern - no matter how small, and even if no more than causing a sense of unease or a 'nagging doubt' – that an adult working in or on behalf of the school or college may have acted in a way that:

- is inconsistent with the staff code of conduct, including inappropriate conduct outside of work; and

- does not meet the allegations threshold or is otherwise not considered serious enough to consider a referral to the Local Authority Designated Officer (LADO).

Examples of such behaviour could include, but is not limited to:

- being over friendly with children;
- having favourites;
- taking photographs of children on their mobile phone;
- engaging with a child on a one-to-one basis in a secluded area or behind a closed door;
or,
- using inappropriate sexualised, intimidating or offensive language.

Where staff wish to raise or report a low level concern, they should refer to the 'Code of Conduct' Policy. Dealing with allegations of abuse against adults in school. Such concerns are usually raised with the Headteacher, or if about the Headteacher, to the Chair of Trustees's.

6. Raising grievances informally - Step 1

- 6.1 We believe that most grievances can be resolved quickly and informally through open communication and discussion with your line manager or Head Teacher We would always aim to resolve your grievance informally where possible and employees are encouraged to seek informal resolution. If you feel unable to speak to your manager, for example, because the complaint concerns them, then you should speak informally to the Head Teacher or a more senior manager. If this does not resolve the issue, you should follow the formal procedure below.
- 6.2 Whilst we encourage the informal resolution of complaints, we recognise that this is not always possible or appropriate. In such a situation, we will consider matters that are raised and we may, depending on the severity and in discussion with you, deal with the matter formally at Step 2 (below).

7. Formal written grievances - Step 2

- 7.1 If your grievance cannot be resolved informally you should put it in writing and submit it to the Head Teacher indicating that it is a formal grievance. If the grievance concerns, or is raised by, the Head Teacher it should be submitted to the Chair of Trustees via the School.
- 7.2 The written grievance should contain a brief description of the nature of your complaint, including any relevant facts, dates, and names of individuals involved. In some situations, we may need to ask you to provide further information. You should also state what your desired outcome would be to resolve the situation. You should note that where your grievance relates to another employee, in order for them to provide a response they will be given a copy of your grievance.

8. Investigations

- 8.1 In some cases it may be necessary for us to carry out an investigation into your grievance. The amount of any investigation required will depend on the nature of the complaint and will vary from case to case. It may involve interviewing and taking statements from you and any witnesses, and/or reviewing relevant documents. The investigation will usually be carried out by Head Teacher or someone else appointed by the Head Teacher. In the case of an

investigation into a complaint against a Head Teacher the Chair of Trustees will determine who will carry out the investigation.

- 8.2 You must co-operate fully and promptly in any investigation. This may include informing us of the names of any relevant witnesses, disclosing any relevant documents to us and attending interviews, as part of our investigation.
- 8.3 The employer may initiate an investigation before holding a grievance meeting where the employer considers this appropriate. In other cases, we may hold a grievance meeting before deciding what investigation (if any) to carry out. In those cases, we will hold a further grievance meeting with you after our investigation and before we reach a decision.

9. Right to be accompanied

- 9.1 You may bring a companion to any grievance meeting or appeal meeting under this procedure. The companion may be either a trade union representative or a colleague. You must tell the person holding the grievance meeting who your chosen companion is, in good time before the meeting.
- 9.2 Should you choose to bring a companion to the hearing, you will be responsible for making these arrangements and for providing your companion with any paperwork that they require for the meeting.
- 9.3 At the meeting, your companion may make representations to us and ask questions but should not answer questions on your behalf. You may request an adjournment to speak to them privately at any time during the meeting.
- 9.4 Acting as a companion is voluntary and your colleagues are under no obligation to do so. If they agree to do so they will be allowed reasonable time off from duties without loss of pay to act as a companion.
- 9.5 If your chosen companion is unavailable at the time a meeting is scheduled, you may propose an alternative time for the meeting to take place and so long as the alternative time is reasonable and within five working days after the original scheduled date, we will postpone the meeting. If your chosen companion will not be available for more than five working days afterwards, we may ask you to choose someone else.
- 9.6 We may, at our discretion, allow you to bring a companion who is not a colleague or union representative as a reasonable adjustment if you have a disability, or if you have difficulty understanding English.

10. Grievance meeting

- 10.1 The employer will arrange a grievance meeting, normally within 5 working days of receiving your written grievance.
- 10.2 You and your companion (if any) should make every effort to attend the grievance meeting. If you or your companion cannot attend at the time specified, you should inform us immediately and we will try, within reason, to agree an alternative time.
- 10.3 The purpose of a grievance meeting is to enable you to explain your grievance and how you think it should be resolved, and to assist us to reach a decision based on the available evidence and the representations you have made. Everyone involved in the process is

entitled to be treated calmly and with respect. The School will not tolerate abusive or insulting behaviour from anyone taking part in grievance procedures and will treat any such behaviour as misconduct under the disciplinary procedure.

- 10.4 After an initial grievance meeting, we may carry out further investigations and hold further grievance meetings as we consider appropriate. Such meetings will be arranged without unreasonable delay.
- 10.5 We will write to you, usually within 5 working days of the final grievance meeting, to inform you of the outcome of your grievance and any further action that we intend to take to resolve the grievance. We will also remind you of your right of appeal. Where appropriate we may hold a meeting to give you this information in person.

11. Appeals - Step 3

- 11.1 If the grievance has not been resolved to your satisfaction you may appeal in writing to the Head Teacher, stating your full grounds of appeal, within 5 working days of the date on which the decision was sent or given to you.
- 11.2 We will hold an appeal meeting without unreasonable delay, normally within 10 working days of receiving your written appeal. This will be dealt with impartially by the Head Teacher or a panel who have not previously been involved in the case (although they may ask anyone previously involved to be present). Where the Head Teacher has made the decision at the grievance meeting a panel of governors will hold the appeal meeting. You have a right to bring a companion to the meeting (see paragraph 0.)
- 11.3 The employer will confirm a final decision in writing, usually within 5 working days of the appeal hearing. This is the end of the procedure and there is no further appeal.

12. Collective Grievances

- 12.1 If you and another employee (or more than two of you) have identical grievances and all wish them to be addressed in the same grievance process, you and your colleagues can raise a collective grievance via this grievance procedure. You and all your colleagues must agree (without any pressure being exerted on staff members to join the collective process) to do this.
- 12.2 If you and your colleagues do not entirely voluntarily agree to this arrangement or if your grievances are not identical, the School will arrange to hear your grievances on an individual basis.
- 12.3 If you and your colleagues are all members of the same trade union, your trade union representative can (if you all wish him or her to do so) raise the grievance on your behalf. Alternatively, you and your colleagues can agree to nominate one of you to act on behalf of all of you.
- 12.4 Your collective grievance will be managed in accordance with Steps 1 to 3 above. However, the written collective grievance statement should also:
 - 12.4.1 Identify you and each of your colleagues who wish to raise the grievance;
 - 12.4.2 Identify any nominated trade union representative or colleague to represent you all;

- 12.4.3 State that you have all voluntarily consented to use the collective grievance procedure;
 - 12.4.4 Confirm that you understand that the grievance will give each of you the right to only one collective grievance meeting, one identical outcome (if applicable), one appeal meeting and one identical appeal outcome.
- 12.5 If, following the grievance outcome, some employees are satisfied with the outcome and do not wish to proceed to an appeal, the request for an appeal should clearly identify those withdrawing from the process and those wishing to pursue the appeal.

13. Disciplinary Proceedings

In the event the grievance is upheld (either following the hearing or after an appeal), and if there is evidence to support such a course of action, the nature of the allegations may result in the School instigating the organisation's disciplinary policy against individuals identified of potential misconduct as a consequence of this procedure.

14. Review of policy

This policy is reviewed and amended annually by the trustees. We will monitor the application and outcomes of this policy to ensure it is working effectively.