Disciplinary Policy for all employees

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Our Christian Ethos and Values
All policies within the Diocese of Norwich Education and Academies Trust (hereafter referred to as "the Trust"), whether relating to an individual academy or the whole Trust, will be written and implemented in line with our Christian ethos and values.

We have high ambition for all, and we truly value the wider educational experience.

We walk and talk our Christian values. We put people at the centre of the organisation and want to see them flourish and grow. Our schools are inclusive, welcoming those of all faiths and none.

Overall accountabilities and roles
The Trust has overall accountability for all its academies and staff. Through a Scheme of Delegation it sets out the responsibilities of the Trust, its Executive Officers, the Local Governance Committee and the Principal / Headteacher. The Principal / Headteacher of each academy is responsible for the implementation of all policies of the Trust.
All employees of the Trust are subject to the Trust's policies.

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Purpose

The purpose of this policy and procedure is to set out the standards of conduct expected of Trust employees and to ensure that all disciplinary matters are dealt with fairly and consistently. This procedure does not deal with performance or sickness absence issues.

The 'appropriate level of authority' should be determined according to Trust's governance structure/Scheme of Delegation.

The Headteacher may delegate application of this policy to a relevant member of the senior leadership team or relevant line manager.

The CEO will be responsible for any disciplinary concerns in relation to Headteachers and for the Central Trust Team.

This policy applies to employees of the Trust referred to in this policy as employees.

The policy and procedure applies to all employees, regardless of length of service, but does not form part of the contract of employment and can be varied from time to time and in consultation with the recognised trade unions.

The procedure does not apply to ex-employees of the Trust.

General Principles

Trust Senior Leaders within the Central Team and Headteacher's have a duty to ensure that they and all the employees they are responsible for are aware of, and comply with, the Trust's policies and procedures. Trust Senior Leaders within the Central Team and Headteachers are also responsible for making sure that employees know when they are not achieving or maintaining the expected standards of conduct or behaviour.

All employees have a responsibility to be aware of and conduct themselves in line with the Trust's policies, the law and maintain acceptable standards of conduct and behaviour. Where relevant, employees must adhere to codes of practice or standards associated with their profession or trade. Employees must also cooperate with disciplinary investigations as required.

The aim of the procedure is to set out and maintain the required standards of conduct and encourage improvement.

The Trust are committed to equality and diversity and will make reasonable adjustments to the application of this policy and procedure in line with our equal opportunities commitment.

Acceptable Behaviour and Conduct

The relevant code of conduct provides employees of the Trust with an effective ethical framework within which to work and it provides the public with confidence that employees are working on their behalf in an appropriate manner.

The Trust expects all employees to meet high standards of behaviour and conduct, including the relevant code of conduct. Examples of the types of expected standards of behaviour are detailed below.

Examples of Standards of Behaviour

The following are examples of the behaviour expected by the Trust of all its employees, although the list is not exhaustive:

- employees should attend work punctually and regularly, in line with operational requirements;
- employees should carry out reasonable requests/instructions from their CEO/Headteacher/managers promptly and efficiently, and to the required standard;
- time off must be approved in advance by the appropriate level of authority, usually the CEO/Headteacher/line manager and be in line with employee's contracts of employment;
- employees must follow the procedures outlined in the Management of Sickness Absence Policy when notifying the school/Trust of sickness absence;
- employees must comply with all of the Trust's policies and procedures, including but not limited to the Safeguarding, Discretionary Leave Policy, Appraisal Policy, Capability Policy, Speak Up Policy, Bullying and Harassment Policy, the relevant Code of Conduct, the ICT Acceptable Use Policy or the Health and Safety Policy;
- employees must adhere to professional body and statutory guidelines, as appropriate, and act professionally at all times. In their own interests, and in the interests of the Trust as a whole, employees should bring serious breaches of Trust's policies or procedures to the attention of management.

Examples of serious misconduct and possible consequences

This is not an exhaustive list of those instances that could be construed as serious misconduct sufficiently serious to warrant a formal disciplinary action. The list is provided to give examples of the types of behaviour that could be regarded as such:

- unjustified refusal of a lawful and reasonable instruction;
- persistent lateness, unauthorised absence, failure to follow the sickness absence notification process;
- verbal assault or threat of violence in the workplace to fellow employees or other people;
- conduct which is likely to cause offence to a fellow work colleague, manager or external customer;
- negligence in carrying out duties in accordance with relevant policies and procedures;
- negligence in the performance of duties and responsibilities not covered above (except due to incapability);
- unauthorised use of the Trust's/school's resources, or confidential information gained whilst in the employment of the Trust (except where employees are protected by the provisions of the Speak Up Policy/Public Disclosure Act 1998;
- acceptance of gifts and hospitality in contravention of the Trust's Policy;
- personal misconduct occurring outside of the workplace, which is deemed sufficiently serious to affect an employee's position at work;
- inappropriate use of electronic communications, including email, virtual meeting platforms, instant messaging software, or internet facilities;
- failure to abide by professional codes of conduct/standards;
- discrimination, bullying or harassment.

Examples of Gross Misconduct

The following are examples of gross misconduct but this list is not exhaustive:

- Action that has caused, or is likely to cause a child to suffer significant harm;
- Failure to take action to protect a child whom the employee believes is suffering, or is likely to suffer, significant harm;

- Falsification of documents as part of Trust processes, e.g. recruitment (providing false on an application form), sickness management (falsifying medical information);
- Theft or unauthorised removal of property, fraud, falsification of the school's/Trust's records or any other dishonesty;
- Actual or threatened violence or bullying behaviour;
- Deliberate or serious damage to the school's/Trust's property or that of a colleague, customer, contractor or authorised visitor;
- Serious negligence which does or could result in loss, damage or injury;
- Deliberately accessing, copying or distributing pornographic, offensive, obscene or inappropriate material on the internet or paper media;
- Being under the influence of alcohol, drugs or other similar substances at work which may give reasonable grounds to suspect that the employee's ability to undertake their duties or being in possession of illegal or intoxicating drugs on site;
- Refusal to obey reasonable instructions or any other act of serious insubordination;
- Any action or behaviour which brings the school/Trust into serious disrepute; • Serious breach of health and safety rules;
- A breach of data protection legislation including unauthorised disclosure of confidential information which causes significant detriment to an individual and/or to the organisation;
- Acceptance of bribes or other secret payments;
- Harassment or any act of discrimination towards anyone who an employee comes into contact with because of their work;
- Convictions relating to activities outside work but which have a significant and direct bearing on your employment and duties with the Trust and its reputation;
- Misrepresenting at any time, including at your appointment with the Trust, any previous positions you have held, your qualifications, date of birth, declaration of health, inaccurate or misleading medical information for personal gain, or a failure to disclose a criminal offence or pending criminal action subject to the provisions of the Rehabilitation of Offenders Act 1974.

Minor Conduct Issues and an Informal Approach

For minor conduct issues, an informal approach will be adopted to help, guide or advise employees in improving their conduct. The CEO/Headteacher or a senior leader delegated by the CEO or Headteacher will only consider dealing with minor disciplinary breaches through the formal stages of the procedure if the misconduct continues or the misconduct is too serious to be dealt with informally. The CEO/Headteacher will seek advice from the designated HR Officer.

Cases of minor misconduct are usually best dealt with informally and confidentially. A conversation about the concerns and resolutions is often all that is required to improve conduct. In some cases, the Headteacher may decide that additional training, coaching and advice may be what is needed.

Where a CEO/Headteacher has a concern about an employee's conduct, they will organise an informal meeting to discuss the concern. The purpose of any informal meeting is to improve conduct, to identify and examine any areas of concern and to provide a reasonable opportunity for the employee to respond. For example, where it is appropriate to question the factual accuracy of any concern that has been identified. The CEO/Headteacher must ensure that the employee understands any future expectations of their conduct and, where appropriate, to develop an action plan leading to improvements in their conduct. Although this may result in a letter of management advice/instruction and any follow-up correspondence being kept by the Headteacher on the employees personnel file, this is not a formal sanction or warning and will not be treated as such. The employee will be asked to confirm that they agree that any action plan that they are signing up to is achievable and realistic and any concerns that the employee may have should be raised with the CEO/Headteacher.

Where the behaviour causing concern may be related to an underlying relationship issue, it may be appropriate to consider an independent third party, such as a mediator, to help resolve the situation rather than disciplinary action.

In the event that the matter cannot be resolved informally, or the matter is too serious for the informal approach to be applied, then the formal disciplinary process will follow. Although the stages of the disciplinary process will normally be followed sequentially the school/Trust may enter the process at any stage depending on the seriousness of the matter. No formal disciplinary action will be taken until the allegation(s) have been fully investigated.

Links with Other Policies and Procedures

Grievance Policy

Where an employee submits a complaint during a disciplinary process through the grievance policy, this will not normally stop the disciplinary proceedings from progressing.

Where an employee raises a grievance during disciplinary proceedings:

- The disciplinary proceedings may be temporarily suspended in order to deal with the grievance;
- The grievance and disciplinary may be run concurrently where they are related;
- Where an employee asserts that disciplinary proceedings being undertaken are unlawfully discriminatory or are motivated by reasons other than misconduct, they can raise a grievance.

Management of Sickness Absence Policy

Where an employee is absent due to sickness whilst a disciplinary matter is pending, the management of sickness absence policy will apply as normal. However, those responsible for keeping in touch would not normally be the same people involved in the handling of the disciplinary case.
Being absent from work due to sickness will not automatically stop the disciplinary procedure progressing. The school/Trust may arrange for an employee to see Occupational Health to ascertain an employee's fitness to participate, if an employee states that they cannot participate in the disciplinary process due to ill-health.

Formal Disciplinary Process

Prior to any formal disciplinary decision being made, the following steps will be taken:

- The CEO/Headteacher will seek advice from their designated HR Officer;
- An initial fact-finding meeting will take place with the Headteacher/manager to establish the facts of the case and to determine if a formal investigation is required. If following this meeting, if it is considered that a full investigation needs to be undertaken then an appropriate investigating officer will be appointed to fully investigate the allegations. It will also be considered at this stage if suspension is required. Alternatives to suspension must also be considered such as working in a different school within the Trust or alternative duties and the suspension risk assessment should be completed;
- A formal investigation will be carried out. If an allegation(s) has/have been made against an employee, then the employee will be notified in writing of the nature of the allegation(s) that is/are to be investigated prior to the investigation meeting. The amount of investigation involved will vary depending on the allegation(s) in question and the circumstances of the case. Investigations will be

dealt with as confidentially as is reasonably practicable and sensitively, in line with the investigation procedure;

- Following the investigation, the investigating officer will write an investigation report and if it is reasonably believed that there are grounds for disciplinary action, the employee will be required to attend a formal disciplinary hearing;
- Employees will be invited to any formal disciplinary hearing in writing;
- Employees are strongly advised to seek advice and representation from their trade union;
- Employees will be provided with a copy of the investigation report and any appendices referred to within the report along with an invitation letter to attend a formal disciplinary hearing at least 5 working days before the meeting/hearing date;
- If the employee or their companion are unable to attend a formal meeting on the date and time provided, then the employee has a right to request one re-arrangement and provide an alternative time and date so long as it is reasonable, and it is not normally more than 5 working days after the original date;
- If the employee is unable to attend the re-arranged meeting/hearing then the meeting/hearing will proceed in their absence;
- Where it is not possible to hold a face-to-face meeting/hearing under this policy, it may be conducted remotely, for example using Microsoft Teams by mutual agreement. The school/Trust will ensure that all parties have access to the virtual meeting. The employee's rights will not be affected, and the school/Trust will ensure that the procedure remains fair and reasonable;
- Employees must provide copies of any relevant evidence that they intend to refer to at the meeting/hearing, at least 3 working days before;
- At the hearing the case against the employee will be explained by the investigating officer and the employee will have the opportunity to respond to the allegations and present their case.

Right to be Accompanied

Employees have the right to be accompanied by a companion at any formal meeting as part of the investigatory or formal disciplinary procedure. The companion may be a fellow colleague, a trade union representative or an official employed by a trade union.

The companion is allowed to address the hearing, to put and sum up the employee's case, respond on their behalf to any views expressed at the meeting and confer with the employee during the hearing. They may also request an adjournment and ask questions of anyone present. The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case. Other than confirming that all parties have the same documentation it would not normally be necessary to read out the content of the documentation.

Under this procedure, employees do not have the right to be accompanied by anyone else (such as a spouse, partner, other family member or legal representative). Where appropriate, eligible employees, for example those with disabilities or language difficulties, may have the attendance of a supporter or interpreter.

Suspension

Depending on the circumstances, an employee may be suspended from work on full pay during the investigation. The CEO/Headteacher should seek advice from their designated HR Officer prior to making any suspension decision. Suspension on full pay is not a disciplinary penalty or a presumption of guilt. Suspensions will be carried out in accordance with the Suspension Procedure. Alternatives to suspension may also be considered such as working in a different area of the school/Trust.

The suspension period will be for no longer than is necessary to investigate any allegations of misconduct, or for so long as is reasonable while any disciplinary procedure against the employee is outstanding. It will be reviewed by a suspending manager on a regular basis to assess if there are any circumstances, not previously known, that affect the decision to suspend. An employee can expect to be updated following regular suspension reviews and on the status of the investigation by a mutually agreed person who will act as their key contact point. Whilst suspended an employee should not visit Trust premises or contact anyone connected with the Trust/school unless they have been authorised to do so by the suspending manager. An exception to this is to contact an employee who is acting as a companion and supporting the employee as part of this process.

Resignations

There may be cases in which an employee offers to resign or resigns prior to a Disciplinary Hearing. In these circumstances a decision needs to be made, relevant to the context of the case, and made clear to the employee about whether the Disciplinary Hearing may still go ahead and reach a decision that:

- the outcome will need to be referred to in any references provided;
- where required, the outcome will be reported to any professional bodies which require the reporting of misconduct issues in such circumstances.

Action against Trade Union Representatives

Disciplinary action against a trade union representative can lead to a serious dispute if it is seen as an attack on their functions. Whilst normal disciplinary standards apply to a trade union representative's conduct as a colleague, the relevant full-time official should be notified of any action (including suspension) that the school/Trust proposes to take. All reasonable efforts must be taken to ensure that disciplinary action is not taken against a trade union representative until the relevant full-time official has had an opportunity to be present at any stage of the formal procedure.

Criminal Offences

Some criminal offences may affect an employee's suitability to continue in their role with the school/Trust or damage their reputation. If an employee is charged with a criminal offence they must inform their CEO/Headteacher/line manager as soon as possible. Failure to inform the school/Trust may be considered a conduct matter. The school/Trust will not treat notification about criminal proceedings, or a conviction (including bind-overs and cautions), as an automatic reason for dismissal or for any other form of disciplinary action being taken. The school/Trust will decide what action to take, if any, after they have reviewed the matter. The main consideration should be whether the conviction is one that makes the employee unsuitable for their job or affects the Trust's reputation. The school/Trust will seek HR advice prior to taking any action.

If an employee is subject to a criminal investigation, the school/Trust will determine to what extent it needs to conduct its own investigation before deciding whether to proceed to formal disciplinary action. The Trust will not usually wait for the outcome of any prosecution before deciding what action to take (unless specifically advised otherwise by the police). No decision to impose a disciplinary sanction or dismiss will be taken prior to giving the employee the opportunity to make representations.

If the school/Trust have reasonable grounds to suspect that the potential misconduct involves fraud, systems abuse, theft, or any financial irregularity, the Trust will determine if it is appropriate to notify internal auditors and/or the police.

Fast Track Process

In circumstances where there is clear evidence and an employee working with a school or the Central Trust Team fully admits to the alleged misconduct, it may be deemed appropriate by the CEO/Senior Leader within the Central Trust Team or Headteacher that the matter could be concluded without the need for a full disciplinary investigation or disciplinary hearing. This process enables cases to be addressed effectively and in a timely manner such as to remove unnecessary procedural steps, negate the need for a lengthy investigation and minimise the anxiety of employee(s). It is envisaged that 'fast tracking' will be infrequent and only considered in the clearest of cases. Advice from the Director of HR must be sought prior to proceeding with the fast track process.

It may be possible to consider the 'fast track process' under the following circumstances:

- Incidents that are regarded potentially as 'misconduct' but not those which appear to be 'gross misconduct' and which may result in dismissal;
- The employee(s) in question has/have admitted the allegations in full and at the earliest opportunity;
- If the employee(s) does/do not initially admit to the allegation but there is factual evidence which the employee cannot refute, i.e. there is indisputable prima facie evidence such as irrefutable CCTV evidence.

In these circumstances an employee will be invited to attend a formal meeting with the CEO/Headteacher or another nominated Senior Leader and designated HR Officer, where the fast track process will be discussed within them along with the appropriate level of sanction that they would receive. The employee will be advised to speak to their trade union representative as to whether they wish to proceed with the fast track process. The highest sanction that may be issued through this process is a final written warning. An employee is entitled to have representation at the meeting by a recognised trade union representative or work colleague.

The employee will be advised and the CEO/Headteacher or another nominated Senior Leader will ensure that they understand that a full disciplinary hearing would give them an opportunity to present their response to the alleged misconduct and provide them with the right to appeal outcome. The employee must understand that through acceptance of responsibility and proceeding with the fast track process and the sanction advised, that the employee relinquishes their right of appeal and that any further misconduct is liable to result in further disciplinary action.

If, during the meeting, new information is disclosed, or 'comes to light', which changes the potential gravity of the employees conduct and thus requires either a full investigation or may lead to dismissal, the 'Fast Track' process will cease to apply and the meeting will stop. The CEO/Headteacher or another nominated Senior Leader will explain why the meeting has stopped and that a full investigation will now be carried out. The CEO/Headteacher or another nominated Senior Leader will obtain advice from the HR Officer as to whether the employee should be suspended. The disciplinary process will then be applied in accordance with the 'nonFast Tracking' stages of the Disciplinary Policy.

The employee will need to confirm in writing if they wish to proceed with the fast track process and the sanction outlined to them in their meeting, if they do wish to proceed then the CEO/Headteacher or another nominated Senior Leader will accept their written acceptance and proceed with issuing the agreed level of warning letter to the employee.

The fast track process cannot be used in relation to conduct that could amount to gross misconduct.

The Disciplinary Hearing

Formal hearings will be conducted in line with the Formal Meeting/Hearing Procedure. An employee must make all reasonable efforts to attend a disciplinary hearing. If the employee or their companion is unable to attend a hearing, the employee may request one re-arrangement and may propose a new date of normally no more than 5 working days from the date of the original date.

The manager will respond sensitively when a delay is required, for example, it may arise for a reason related to a disability or emergency involving dependants. The school/Trust may arrange another hearing date if the employee fails to attend through circumstances outside of their control.

If an employee does not attend the hearing without good reason, and if an employee does not attend the rearranged meeting/hearing, a decision will be made in their absence. The employee may submit a written statement to be taken into consideration at the hearing/meeting in their absence and a decision will be made based on the evidence available.

The disciplinary hearing will be conducted by a Panel comprising of a minimum of two panel members, who will be an appropriate level of management or authority as outlined in the scheme of delegation. The Panel will agree who is to be the Panel Chair for the disciplinary hearing. A representative from the HR team will always be present at disciplinary hearings that may result in dismissal or an alternative to dismissal.

The Panel Chair will ask the Investigating Officer to attend the hearing to explain the allegations against the employee and to present a summary of their report and answer questions on it. The employee will have the opportunity to respond to the allegations, which will include the presentation of their own evidence if they wish. The employee and investigating officer may request that a witness(es) attend the hearing. However an employee may not call witnesses who are purely character witness(es). Where a witness(es) is/are required to attend the hearing by the investigating officer, then they will be invited to attend by the investigating officer. Where the employee requires a witness(es) to attend it is the employee's responsibility to make the necessary arrangements for them to attend the hearing.

Disciplinary Penalties

First written warning

A first written warning may be issued and will usually be appropriate for a first act of misconduct where there are no previous warnings and where any agreed adjustments and other support have been made or provided. The warning will remain active for 6 or 12 months and it should be disregarded for disciplinary purposes after this period.

Final written warning

A final written warning may be issued in the following circumstances:

- where there has been a further act of misconduct while an existing first written warning is in effect; or
- the seriousness of the misconduct is sufficient to warrant such a warning, even though no previous warning may have been issued. The warning will remain active for 12 months and it should be disregarded for disciplinary purposes after this period.

Dismissal

The Hearing Panel Chair has the authority to dismiss an employee in the following circumstances:

- where, within the duration of the final written warning, the necessary improvement in behaviour has not been achieved and any agreed adjustment and other support has been made or provided. This would be with notice or payment in lieu of notice;
- where there has been a further act of misconduct while an existing warning is in effect; This would normally be with notice or payment in lieu of notice;
- where it is reasonably believed that the employee has committed an act of gross misconduct. Gross misconduct will usually result in summary dismissal without notice and without pay in lieu of notice. Examples of gross misconduct are detailed in the policy.

The Hearing Panel Chair may at their discretion consider alternatives to dismissal. Examples of such alternatives include demotion, loss of seniority, reduction in pay, compulsory training. If such an alternative is applied, it may also be accompanied by a final written warning. If an employee decides to resign from their role during the ongoing investigation and before the panel has issued an outcome, the disciplinary process will not cease and an outcome will be issued in writing.

If the allegations are linked to safeguarding, the school/Trust is required, under Keeping Children Safe in Education (KCSIE) regulations, to continue with the disciplinary process and issue an outcome in writing. In this case, the relevant external bodies will be informed and referrals to DBS/TRA made as appropriate.

Any employment reference provided by the school/Trust to a new employer will state if resignation occurred during a disciplinary process.

Warnings

Where a warning is issued, this will be confirmed to the employee in writing within 5 working days of the hearing. The warning will state the misconduct that led to the warning, the action or improvement required, the duration of the warning and the likely consequences of the action of improvement not being taken and/or any further misconduct. Employees will also be advised of the right of appeal and the person to whom an appeal should be made.

Appeals

Where disciplinary action has been taken, if an employee dissatisfied with that decision, they can appeal. The appeal must be in writing and clearly set out the grounds of the employee's appeal in line with the list below and include all the information the employee wishes to rely on at the appeal hearing. This will not be a rehearing of the case and will only be based on the grounds of the appeal as stated in the appeal letter. The appeal should be sent to the Headteacher or, where the Headteacher is the employee appealing, the Trust CEO, within 5 working days of the date the employee received the letter notifying them of the disciplinary decision. The action taken at the disciplinary hearing will remain in force pending the outcome of the appeal.

The employee may only appeal against either:

- the finding that they were guilty of committing the alleged act (or acts) of misconduct where the evidence did not support this finding;
- for a legally unfair reason;
- the severity of the disciplinary sanction imposed taking into account the nature of the misconduct and the mitigating circumstances;
- the fact that the correct procedure was not followed and why;
- the fact that new evidence that was not considered or available in the disciplinary hearing and has subsequently come to light that would change the outcome;
- the sanction is inconsistent with how others have been treated;

- there was unlawful discrimination in the handling of the disciplinary.

The employee will be invited to an appeal hearing in writing in accordance with the Formal Meeting/Hearing Procedure. They will be given at least 5 working day's notice of the appeal hearing. They have the right to be accompanied at the appeal hearing by a companion or a Trade Union Representative. An appeal panel will be convened of panel members who have not had any involvement with the case.

The employee must provide copies of any relevant evidence they intend to refer to, at least 2 working days before the hearing. The outcome of the appeal may be to overturn or confirm the original decision or apply a different, but not more serious, sanction. The employee will be advised of the appeal outcome, which will be confirmed in writing within 5 working days of the appeal hearing.

The decision of the appeal panel will be final and there is no further right of appeal.

An employee is not entitled to raise a further complaint under the Trust's Grievance Policy (or any of the Trust's complaints procedures) in relation to the same grounds of appeal.

Statutory Duty to Refer Conduct Matters

There is a legal requirement for the school/Trust to make a referral to the Disclosure and Barring Service if it is felt that an employee poses a risk to a child or a vulnerable person or have engaged in conduct that has harmed (or is likely to harm) a child or vulnerable person.

In addition, a referral will be made to a relevant professional body (i.e., the Teaching Regulation Agency) if there are concerns about any serious misconduct and fitness to in relation to an employee carrying out their duties and responsibilities or fitness to practice.

Actions or behaviours that could be construed as gross misconduct may lead the investigating officer to conclude that there has been a complete breakdown of trust and confidence between the Trust and the employee, even where any individual act in itself would not constitute gross misconduct.

Note: the incidences of gross misconduct described above would normally result in dismissal without notice. Action short of dismissal may be taken in the event of mitigating circumstances.