

# **DISCIPLINARY POLICY AND PROCEDURE**

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## 1. Introduction

The main purpose of the disciplinary procedure is to address issues with an employee whose personal behaviour, attitude and conduct has fallen below the expected standard with an aim to improve this. The procedure serves to ensure that carried out in a fair and consistent manner.

The disciplinary procedure is strictly confidential between the parties involved and others who need to know and all aspects including all documentation and records shall be treated as such in so far as this is possible and consistent with natural justice and other legislation that may be in force from time to time.

- In minor cases of alleged misconduct, the manager should initially seek to resolve the matter informally by discussion with the employee and by providing them with the appropriate management advice and guidance’.
- The disciplinary procedure is to be used where an employee is the subject of an allegation of misconduct’.
- Each step and action under the procedure must be taken without unreasonable delay by either the Trust or the employee.
- The location and timing of meetings must be reasonable. Meetings will be held at an agreed location, and normally within working hours.

This policy has been provided as a Trust level resource for BDAT and does not form part of an employee’s terms and conditions of employment save for clause 14 which amounts to a collective agreement and forms part of every Teacher’s terms and conditions of employment.

## 2. Powers

The Trust has delegated the following powers to the following levels of staff:

Sanction	Disciplinary Officer	Appeal Officer
<b>Level 1 - A first warning</b>	SLT	Principal/Head of School
<b>Level 2 - A written warning</b>	SLT	Principal/Head of School
<b>Level 3 - A final warning</b>	SLT	Principal/Head of School / BDAT Education Director / Executive Head and/or member of the LGB
<b>Level 4 - Dismissal.</b>	Principal/ Head of School / Executive Head and/or member of the LGB or Trustee	Panel of three drawn from: Executive Head / BDAT Executive Director and/or Chair of LGB or Trustee

In the case of the Academy Principal/Head of School the Disciplinary officer will be the Executive Principal and/or Chair of the LGB. The appeal will be to a panel of three to include the CEO (when not disciplinary officer) and /or another BDAT Executive Director.

For allegations regarding the Chief Executive, a nominated Trustee will have the authority to be the Disciplinary Officer and any appeal will be heard by a panel of at least three Trustees.

In a case where the person who would normally be the disciplinary officer is compromised through existing circumstances or, will need to investigate the matter/be significantly involved in the investigation or, does not have the resource to deal with the matter at that time – the case will normally be dealt with by an alternative at the same level or the next level of management. (i.e. another Vice Principal, another Principal/Head of School within the Trust, or the Chief Executive.). Central Trust officers may also be requested to lead investigations, reporting to the Principal/Head of School or Chair of Governors. In cases where the Chief Executive is compromised, the matter will be discussed with the Chair or Vice Chair of the Trust to determine the way forward. It is always preferable to deal with matters internally wherever possible.

### **The Process**

- This process applies when either management advice and guidance has not led to the required improvement in conduct or if the allegation is sufficiently serious to prompt a disciplinary investigation.
- For all meetings under this policy and procedures, notes will be taken and these will be shared with the employee to afford the employee the opportunity to make comment or correct any factual inaccuracies. Tape recording may also be considered. It is acknowledged that there shall be no obligation upon the employer to agree the amendments suggested by the employee or his or her representatives.
- Before any disciplinary decision is made the employee will be advised of the allegations against them and will be given the opportunity to state their case. The employee will be notified in writing of the allegations to be answered (plus any documentary evidence) before the disciplinary hearing. This process applies when either formal or informal management advice and guidance has not led to the required improvement in conduct or if the allegation is sufficiently serious to prompt a disciplinary investigation.
- Where appropriate or otherwise necessary, there may be a fact-finding process to determine if a disciplinary investigation is required. The Disciplinary Officer will determine who will lead the fact-finding. The person will be at the same level or a higher level than the person(s) being investigated. Notes will be taken at all fact finding and investigation meetings which take place under the policy, and that these will be shared with the employee, who will also be given the opportunity to confirm/or comment on their accuracy.
- The employee must make every effort to attend an investigative interview or disciplinary hearing and failure to attend, without good reason may be treated as misconduct in itself. If the employee fails to attend without good reason, or if they are persistently unable to do so (for example for health reasons), the Trust may have to take a decision based on the available evidence. Employees will be normally entitled to be accompanied by a work colleague/trade union representative at all meetings under this procedure save where the nominated work colleague/trade union representative, or their substitutes, are unable to attend. Under current legislation, one postponement is permitted for five days.
- The Trust will give a minimum of 5 working days' notice of a disciplinary hearing. Supporting documents (the investigation report and witness statements) will be provided at this stage. The employee may submit written evidence no less than 48 hours prior to a hearing.

- At any disciplinary hearing or appeal hearing the employee will have the right to put forward their case. Such evidence must be provided to the Trust at least 48 hours before the disciplinary hearing or appeal.
- The Trust shall be entitled to manage the time and resources allocated to a disciplinary matter including managing the time of a disciplinary hearing and allocating time within a disciplinary hearing. This may result in limiting the amount of time allocated to the parties to present their cases. Appendix 2 has been included to help facilitate smooth and concise hearings, which in turn will help to manage both sides' expectations.
- The decision and the reasons for it shall be communicated in writing to the employee.
- An employee will be advised of their right of appeal within five working days, and how to exercise that right. This will be part of the decision letter which communicates the decision. Appendix 3 shows a standard format/template for submitting an appeal.

### **3. The right to be accompanied.**

Wherever possible the employee may be accompanied by a trade union representative or work colleague during any part of the disciplinary process.

The employee may bring a work colleague to any disciplinary or appeal hearing under this procedure. The companion may be either a trade union representative or a work colleague, providing the work colleague is not acting in a legal capacity. The employee must tell the disciplinary officer who their chosen work colleague is, at least two days before hearing.

A work colleague is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a work colleague if they do not wish to do so.

If the choice of work colleague is unreasonable, the Trust may ask for the employee to choose someone else. For example:

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

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

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

### **4. Trade Union Representatives**

Although normal disciplinary standards will apply to their conduct and performance as employees, no disciplinary action or suspension will be taken until the circumstances of the case have been discussed with an appropriate official from their trade union. It will also be the case wherever possible in the case of suspension but may not be possible in certain exceptional circumstances.

## **5. Suspension**

- In certain circumstances consideration may be given to suspending the member of staff from their place of work at the outset of the investigation or at any stage during the course of the investigation. Before suspending an employee, the employer should consider what the purpose of the suspension is, and whether there is an alternative to it. They should also take care to document the reasons for their actions, including evidence that they have considered alternatives, the employer should also make the employee aware of the reason(s) that a suspension has been deemed necessary.
- The suspension will be for no longer than is necessary and the Trust will confirm the arrangements to the employee in writing with a proposed date for reinstatement.
- The decision to suspend may only be taken by a Principal/Head of School/Executive Head or Chief Executive. In the unavailability of a Principal/Head of School or Chief Executive the decision may be delegated to a nominated Vice Principal/Head of School who must make every effort to contact the Principal/Head of School or Chief Executive to discuss the case and be authorised to make the decision. Where the Principal/Head of School is suspended the Chief Executive or Chair of Governors only has the power to do so and must notify the full Board of Directors. Where the Chief Executive is suspended the Chair of the Trust only has the power to do so and must notify the full Board of Directors.
- While the employee is suspended, they should not visit the Academy or contact any of its students, parents, governors, Chair of Governors or Trust Directors, members or colleagues, unless the employee has been authorised to do so by the Principal/Head of School. Such authorisation to be in writing.
- Suspension is not an assumption of guilt and is not considered a disciplinary sanction, nor does not imply that any decision has already been made about the allegations. The employee will continue to receive their salary during the period of suspension. The suspension will be kept under constant review.
- Every effort will be made to avoid lengthy periods of suspension. The decision to suspend and the conditions of suspension will be reviewed periodically, and the employee kept updated.
- The suspension and the reason for it will be kept confidential, as appropriate, and that, wherever possible, an explanation will be agreed with the employee which will be used to inform others.

## **6. Investigations**

The purpose of an investigation is for the Trust to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and any relevant witnesses, and/or reviewing relevant documents.

Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until the investigation has been concluded.

An employee does not have the statutory right to bring a work colleague or trade union representative to an investigative interview. However, the Trust would normally allow an employee to bring a work colleague or trade union representative to attend.

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

## **7. Criminal Charges**

Where the employee's conduct is the subject of a criminal investigation, charge or conviction the Trust will investigate the facts before deciding any course of action under this policy and procedure.

The Trust will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where the employee is unable or has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, the Trust may have to take a decision based on the available evidence.

A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if the Trust considers that it is relevant to the employee's employment.

The ACAS Code of Practice on Disciplinary and Grievance Procedures states that criminal charges or convictions outside employment should not be treated as automatic reasons for dismissal. The main consideration should be whether the offence is one that makes the employee unsuitable for their type of work. The employer, having considered the facts, will need to be seen to make a balanced judgement as to whether the conduct is sufficiently serious to warrant disciplinary proceedings including dismissal. Due consideration will be given to the ACAS Code when adhering to the Disciplinary Policy.

## **8. Procedure at Disciplinary Hearings**

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

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

Both parties may ask relevant witnesses to appear at the hearing. Witness to be called must be clearly stated in the meeting bundle. Cross-examination of witnesses by all parties must be conducted in a professional and courteous manner. The Chair of the meeting will ensure that this takes place and will intervene should they be concerned that this requirement is not being followed by any questioner and will advise on how future questioning will take place.

Should the employee wish to question the evidence provided by another witness in the investigation then this should be raised by the employee during the fact finding investigation meeting(s), in advance of the hearing, or during the hearing.

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

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

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

The disciplinary officer may adjourn the disciplinary hearing if the Trust needs to carry out any further investigations in light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity, normally five working days, to consider and comment on any new information obtained before a decision is given. The employee will also have the opportunity to submit information/evidence, and call witnesses in response to this at least two days before the hearing.

## **9. Levels of Disciplinary Sanction**

There are four stages, each of which is designed to cover the varying seriousness of the cases. The stages provide an appropriate sequence for persistent cases of misconduct. Where the allegation is of sufficient seriousness to use the procedure, disciplinary action will be taken at whatever stage appears appropriate to the circumstances.

No employee will normally be dismissed for a first breach of discipline, but dismissal may be considered, irrespective of previous disciplinary record, in the case in of gross misconduct when the sanction may be dismissal without notice and without pay in lieu of notice.

The following decisions will be confirmed in writing: -

### **No action**

**Level 1 - A first warning** may be given where the case is of sufficient seriousness to bring to the attention of the employee formally.

**Level 2 - A written warning** may be given where the case has already involved a first warning and insufficient improvement has been made, where further misconduct has occurred, or where the case is of sufficient seriousness.

**Level 3 - A final warning** may be given where the case has already involved a written warning and insufficient improvement has been made, where further misconduct has occurred or where the case is of sufficient seriousness. Also, where gross misconduct may not warrant dismissal, for example due to mitigating circumstances.

**Level 4 - Dismissal.** An employee is likely to be dismissed where the case has already involved the final warning and insufficient improvement has been made or where further misconduct has occurred or where the case is so serious as to constitute gross misconduct.

Warnings will be disregarded after the specified period of satisfactory conduct but will remain on the employee's personnel file. The Trust GDPR Policies will be strictly adhered to throughout this process. Employee references will not refer to any expired warnings.



First warning, the time limit shall be 6 working months from the date of the decision.

Written warning the time limit shall be 9 working months from the date of the decision.

Final warning the time limit shall be 12 working months from the date of the decision. However, in exceptional circumstances misconduct may be so serious that if repeated at any time in the future the likely consequence is dismissal. The person/s making the decision may impose a final written warning and specify that such a warning will remain in force for a longer period of time.

## 10. Alternatives to dismissal

In some cases, the Trust may at its discretion consider alternatives to dismissal. These will usually be accompanied by a final written warning. Examples include:

- Demotion (providing the Trust has the contractual right to do so).
- transfer to another department or job.
- loss of seniority.

## 11. The Decision Letter

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

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

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

## 12. Right of Appeal

All employees have the right of appeal against all warnings and dismissal.

Appeals must be lodged in writing to the Principal/Head of School/Executive Head within five working days of the outcome letter being communicated to the employee In the case of the Principal//Head



of School appealing, the Chief Executive needs to receive a logged appeal in writing within five working days.

If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful the employee will be reinstated with no loss of continuity of pay.

If the employee raises any information or evidence in their appeal, the appeal officer may need to carry out further investigation. If any new information or evidence comes to light the appeal officer will provide the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have five working days to consider this information before the hearing and submit evidence and names of witnesses to be considered at least two days before the hearing.

The Trust will give the employee written notice of the date, time and place of the appeal hearing at least five working days beforehand.

The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at the Trust discretion depending on the circumstances of the case. In any event the appeal will always be conducted impartially and a more senior manager who has not been previously involved in the case. The employee may bring a companion to the appeal hearing.

The appeal officer may adjourn the appeal hearing if the Trust need to carry out any further investigations in the light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity, normally five working days, to consider any new information obtained before a decision is given and submit evidence and names of witnesses to be considered at least two days before the hearing.

The appeal officer may:

- confirm the original decision.
- revoke the original decision.
- issue a different sanction

The appeal officer will inform the employee in writing of the final decision as soon as possible, and normally within five working days of the appeal.

There will be no further right of appeal.

### **13. Notice Period for Teaching Staff**

Should a Teacher be dismissed by the Trust by reason of misconduct then the Teacher shall be due to receive notice until the end of that term (30 April; 31 August or 31 December – as appropriate). If that period of notice is shorter than two months – then the Trust will make a payment in lieu for the balance to ensure a minimum of two months' notice/pay in lieu of notice is paid to the Teacher.

This information is provided in accordance with s.1 Employment Rights Act 1996. To the extent that the terms of this clause conflict with the School Teachers' Pay and Conditions and the Conditions of Service for School Teachers in England (the Burgundy Book) or other collective agreement – the terms of this clause shall prevail.

#### **14. Linked Policies/Procedures**

The following should also be consulted where appropriate:

- ACAS Code of Conduct
- BDAT Equality and Diversity Policy (appropriate reasonable adjustments will be made to all stages and sanctions issued under this procedure to accommodate disability)
- BDAT Grievance Policy
- BDAT Attendance Management Policy (Staff)
- BDAT Managing Allegations of Abuse Policy

Actions under this policy will not prejudice the outcome of any of these linked policies.

This Policy will follow the ACAS Code of Practice as a minimum.

## **Appendix 1**

### **Examples of Misconduct**

The following non-exhaustive list sets out examples of activities which may generally be construed as misconduct depending on the context of the action. Depending on the level of severity, these actions could meet the threshold for either misconduct or gross misconduct.

- 1.1** Persistent poor timekeeping.
- 1.2** Failure to comply with a reasonable management instruction.
- 1.3** Failure to comply with sickness absence procedures.
- 1.4** Acting in an aggressive or threatening manner or using foul or abusive language towards customers, colleagues or managers.
- 1.5** Misuse or unauthorised use of school facilities, equipment or resources.
- 1.6** Inappropriate use of school time, e.g. excessive use of time for personal conversations, correspondence, telephone calls, emails/internet use etc.
- 1.7** Knowingly being an accessory to, condoning or failing to report a serious disciplinary offence.
- 1.8** Dishonesty, deliberate misinterpretation of information or falsification of records.
- 1.9** Unauthorised use or disclosure of confidential information gained through employment with the school or failure to protect such information.
- 1.10** Being unfit for duty through use of illegal substances or alcohol.
- 1.11** Smoking in any school owned premises and grounds.
- 1.12** Use of e-cigarettes in any school own premises.
- 1.13** Failure to observe Health and Safety rules by act or omission, or negligence that threatens health and safety.
- 1.14** General conduct in the workplace that has a negative impact on the work of the section, on colleagues, or on service delivery.
- 1.15** Failure to declare any other work undertaken while being employed by the school.
- 1.16** Damage to property.
- 1.17** Failure to comply with the companies' policies and procedures.
- 1.18** Deliberate failure to reach required standards of performance.
- 1.19** Deliberate failure to carry out duties and responsibilities.
- 1.20** Inappropriate behaviour/conduct towards management or colleagues.

## **Examples of Gross Misconduct**

The following non exhaustive list sets out examples of activities that may generally be construed as gross misconduct. Depending on the level of severity, these actions could meet the threshold for either misconduct or gross misconduct. Negligent/grossly negligent/wilful/repeated breaches will be dealt with under the Disciplinary Policy.

- 2.1** Dishonest acts and deliberate falsification of records which result in or could result in serious consequences.
- 2.2** Falsification of qualifications which are a stated requirement of employment or which resulted in financial gain.
- 2.3** Serious insubordination.
- 2.4** Conduct that is a serious abuse of position.
- 2.5** Bringing the school/MAT into serious disrepute or causing a serious loss of confidence in the school/MAT.
- 2.6** Theft or fraud.
- 2.7** Undertaking other paid employment whilst receiving sick pay or other benefits from the school during a period of sickness or unauthorised absence without prior management agreement.
- 2.8** Deliberate disregard of the MAT's financial procedures and rules.
- 2.9** Physical or verbal assault or violence.
- 2.10** Deliberate and serious damage to school property.
- 2.11** Unauthorised removal of school property.
- 2.12** Serious breach of Health and Safety rules and/or regulations.
- 2.13** Breach of Equal Opportunities Policy. Offensive or abusive behaviour towards others, including harassment, bullying or victimisation.
- 2.14** Making defamatory statements in the course of employment (e.g. making statements that are or could be slanderous or libellous). (A defamatory statement is a statement that will injure the reputation of another in the estimation of members of society generally).
- 2.15** Being unfit for duty through use of illegal substances or alcohol in circumstances where it could constitute a health and safety hazard or where it would be in breach of a position of responsibility and trust.
- 2.16** Loss of confidential or sensitive data through negligence, loss of important or expensive equipment through negligence.
- 2.17** Deliberately accessing internet sites containing pornographic, offensive or obscene material.
- 2.18** Criminal offences committed at work.
- 2.19** Criminal offences and other conduct outside employment which would prevent an employee from continuing to do their job or which affects their suitability to perform their work or is liable to damage the school/MAT.
- 2.20** Serious negligence which causes or might cause unacceptable loss, damage or injury.
- 2.21** Serious breach of confidence (subject to the Public Interest (Disclosure) Act).
- 2.22** Unauthorised absence from work.

## **Appendix 2**

### **Standard Procedure for Disciplinary Hearing**

1. The investigating officer\* to present the Trusts case and may call witnesses.
2. The employee or his/her representative to have the opportunity to question the investigating officer and any witnesses about the facts provided.
3. The Chair to have the opportunity to question the investigating officer\* and any witnesses.
4. The employee or his/her representative to put his/her case and to call such witnesses as he/she wishes.
5. The Chair\* to have the opportunity to ask questions of the employee or his/her representative and witnesses.
6. The investigating officer to have the opportunity to ask questions of the employee or his/her representative, or the witnesses.
7. The investigating officer\* to have the opportunity to sum up his/her case. (No new evidence should be submitted at this point)
8. The employee or his/her representative to have the opportunity to sum up his/her case. (No new evidence should be submitted at this point)
9. The Chair to check that all present are satisfied they have had a fair opportunity to present their case and make representation.
10. The investigating officer\* and the employee and his/her representative to withdraw.
11. The Chair to consider the facts presented to them.

The hearing may also be adjourned at the deliberation stage, in order to allow for further investigation if hearing panel feels that there are points that need clarification. An opportunity may be given to re-examine the evidence/witnesses.

**\* Management representative and a representative of the Trust HR function if necessary**

### Appendix 3

Standard template for submitting a disciplinary appeal

## APPEAL AGAINST DISCIPLINARY PROCEEDINGS

This form will help you with your appeal and will speed up the process

<b>Name</b>				
<b>Post Title</b>				
<b>School</b>				
<b>Date of decision letter</b>				
<b>I wish to be represented by a Trade Union</b> <i>(tick as appropriate)</i>	<input type="checkbox"/>	<b>Yes</b>	<input type="checkbox"/>	<b>No</b>
<b>My representative is</b>				
<b>Name of Trade Union</b>				
<b>I wish to appeal because</b> <i>(tick as appropriate)</i>				
<input type="checkbox"/>	<b>The decision was too harsh</b>			
<input type="checkbox"/>	<b>The proper procedures were not followed</b>			
<input type="checkbox"/>	<b>New evidence has come to light</b>			
<input type="checkbox"/>	<b>The decision was unsound</b>			
<input type="checkbox"/>	<b>Other</b>			
<b>I intend to call witnesses</b> <i>(tick as appropriate)</i>	<input type="checkbox"/>	<b>Yes</b>	<input type="checkbox"/>	<b>No</b>
<b>Please provide the name(s) of any witness(es) that you wish to call in the space provided below</b> <i>(if applicable)</i>				

Whatever your reason for appeal, you should give details to support it in the space provided on the back of this form. **Failure to complete this section could result in your appeal being dismissed in accordance with the provisions of the appeals process detailed in the Disciplinary Policy. You do not, however, have to state your entire case - a summary of the relevant arguments will suffice.**

**Please provide detail of the grounds for the appeal in the space provided below;**

**Signature of Applicant** (person raising appeal)

**Date**

**Please return completed forms to:**

(Insert name of person making decision / the Chair of the Governors for School Name)

**This form should be returned within 3 working days of your receipt of the outcome.**