

DISCIPLINARY POLICY

Learning Academies Trust

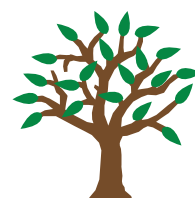
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LEARNING
ACADEMIES TRUST

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CHANGES

Policy date	Summary of change	Author	Version	Review date
22/03/2023	Policy reviewed and updated.	Amy Bosworth, HR Lead and Business Partner	1.0	22/03/2024

SECTION A: DISCIPLINARY POLICY

1. POLICY STATEMENT

This policy has been adopted by the Trust Board of the Learning Academies Trust. Its purpose is to support and encourage employees to achieve and maintain acceptable standards of conduct and behaviour. It also aims to ensure fairness, equality and consistency in the day to day management of matters relating to employee conduct, including the investigation of alleged misconduct and decisions regarding sanctions in cases of misconduct up to and including dismissal. This policy complies with the ACAS Code of Practice on Disciplinary Procedures and is written in accordance with all relevant legal requirements.

2. SCOPE OF POLICY

This policy and procedure applies to all employees of the Learning Academies Trust both permanent and temporary.

It does not apply to support staff serving their probationary period. Separate procedures for this group of staff are given in the Trust's Support Staff Probationary Policy.

In addition, this procedure does not apply in the following situations:

- Termination of a fixed term contract
- Dismissal due to redundancy, (see the Trust's Redundancy Policy and Procedure)
- Early retirement or retirement on the grounds of efficiencies of the service
- Dismissal for "some other substantial reason", for example where an employee is temporarily replacing another employee who is absent from work on maternity leave or secondment
- Dismissal for breach of a statutory enactment
- Addressing issues relating to capability (see the Trust's Capability Policy and Procedure)

Guidance on each of the above can be obtained from the Trust's HR Lead.

The Local Governing Body has delegated to the Headteacher/CEO authority to take disciplinary action in all cases except those involving possible dismissal.

References to 'Line Manager' contained in this Policy may, depending on the circumstances, be any senior member of staff required to perform a role within the disciplinary process. It could also refer to a governor, who for example, is required to perform a role in relation to dealing with an issue involving the Headteacher/CEO or another staff member where appropriate.

2.1 Conduct outside of work

Misconduct or criminal offences that have occurred outside the workplace may be dealt with under these procedures if the employee's conduct or activities:

- Make them unsuitable for the job they are employed to do
- Are such that they could potentially damage the Trust's/school's reputation e.g., have committed a criminal offence
- (In respect of teaching staff) be in breach of the 'Teacher Standards'- Part 2; Personal and Professional Conduct

In these circumstances, it is important to seek further advice from the Trust's HR Lead.

This Disciplinary Policy and Procedure complies with best practice as detailed in the Advisory Conciliation and Arbitration Service (ACAS) Codes of Practice and is designed to promote equality, fairness and consistency within the school.

3. RESPONSIBILITIES

3.1 Employees

All employees within the Trust have a responsibility to make sure they can access and understand the rules governing their performance and behaviour in the workplace. Employees have a responsibility to endeavour to meet these standards as a representative for and as an employee of the Trust.

Employees involved in a disciplinary process must declare any conflict of interest that arises.

3.2 Management

The Trust Board, Local Governing Body, Headteacher, CEO and all employees with line management duties are responsible for setting and maintaining required standards of performance within the school. They are also responsible for ensuring disciplinary rules are in place and that employees are aware of and have access to them.

3.3 Trust Board, Local Governing Body, Headteacher and CEO

The Trust Board, Local Governing Body, Headteacher and CEO will at all times ensure they act in a way that will avoid unfair discrimination, improve communications and promote positive employee relations throughout the Trust.

SECTION B: DISCIPLINARY PROCEDURE

1. PURPOSE

The purpose of this disciplinary procedure is to give guidance on the standards of behaviour and conduct expected of employees and to set out steps that will be followed when dealing with breaches of those standards.

This procedure is designed to promote fairness and consistency of treatment in disciplinary matters and encourage improvement in employees conduct. This procedure is therefore viewed as remedial rather than punitive.

This procedure provides a mechanism to deal fairly and equitably with any allegation of misconduct.

Breaches in expected standards of conduct and behaviour could result in disciplinary action being taken, which, in extreme cases, may include dismissal.

This document fulfils relevant statutory requirements contained both in Education and Employment legislation. It also conforms to ACAS Codes of Practice which serve to reinforce and encourage good employee relations.

This policy forms part of the Contract of Employment for all employees of the Trust.

In summary the procedure has broadly two types of action, one informal (Section 2.0) and the other formal (Section 3.0).

2. RECORDING OF MEETINGS

Recording of meetings is not permitted without the express consent from all participants. All parties will be required to sign an agreement prior to a recording taking place. Covert recording of these meetings may result in the member of staff conducting the recording being subject to disciplinary action.

3. INFORMAL ACTION

3.1 Reasons for taking informal action

The Trust Board, Local Governing Body, the Headteacher/CEO and employees with line management responsibility are encouraged to deal with low level, minor concerns relating to conduct informally, in the first instance.

3.2 The benefits of informal action

Minor breaches of discipline can often be dealt with informally with the potential benefit that it may enable the concern to be addressed and steps taken to resolve the matter more quickly reducing the risk of disruption, demotivation and absenteeism.

Addressing a concern informally does not mean it cannot continue to be monitored and reviewed. In the event of a subsequent failure to maintain an improvement in behaviour or where repetition of the misconduct occurs steps may be taken in accordance with the formal process set out under Section 3. (Where relevant please also refer to the Trust's Performance Management, Managing Attendance and Staff Capability (attendance relating to health) Policies.

Informal action can take the form of a verbal and or written caution or a reprimand (short of a warning) accompanied by instruction about future behaviour or conduct, which may be sufficient to correct an employee's behaviour. There is no right of appeal against informal action.

Informal action may not always be practical, possible or appropriate. For example, it would be inappropriate to respond to an allegation of gross misconduct by taking informal action.

3.3 Informal Process

Informal action may take the form of discussions between the line manager (who may be the Headteacher/CEO) and an employee, to establish the facts of the case.

Whilst there is no statutory right to have formal representation at an informal meeting, an employee may wish to bring a trade union representative or work colleague with them for support. Such a request should not be unreasonably refused. However, the line manager could reserve the right to refuse a request if facilitating such an arrangement would result in an unreasonable delay in the meeting taking place. (See Section 4.7 on 'Right of accompaniment').

Informal meetings are by their nature unofficial. However, the line manager should keep a written record of any discussion. These notes may subsequently be used as part of any on-going enquiries.

If during informal discussion, it appears the matter is more serious than was first thought and as a consequence formal action may be necessary, the line manager should stop the meeting, advise the employee the matter needs to be dealt with formally and the reasons for making this decision. Arrangements for a formal meeting should then be made following the steps set out in Section 3.

One of the reasons for an adjournment in these circumstances is that an employee has a statutory right to be represented at a formal meeting they should be informed in writing ahead of a meeting that it is being conducted in accordance with the formal stage of the disciplinary process and at the same time receive details of the alleged misconduct.

3.4 Possible outcomes to the informal process

There may be a number of possible outcomes to the informal process, including:

- No further action is necessary
- Objective setting to improve behaviour, conduct or performance. In the latter case this may include setting specific, measurable, achievable, relevant and time bound (SMART) targets. (Please refer to the Trust's Performance Management/Appraisal and Capability Procedures)
- Identifying and agreeing training needs. A programme of learning and development may be implemented, with consultation and support accessed from appropriate sources. The relevance and timing of any training programme will depend on the individual circumstances of each case
- An occupational health referral for consultation, counselling or medical assessment may be appropriate as part of the Trust's duty of care to employees
- Monitoring and reviewing the situation, as part of regular supervision and performance management conducted by the Headteacher/CEO or other line manager
- Initiate further investigations into the allegations of misconduct so that the facts can be established and an informed decision made about possible further steps being taken in accordance with these procedures

4. FORMAL ACTION

A disciplinary hearing will not be conducted until the allegations have been investigated. Notes of **all** interviews and meetings should be taken and kept at all stages of the formal process.

4.1 Suspension

Suspension from work is not a disciplinary sanction and is often referred to as a neutral act. However, it is a measure which should **only** be taken after careful consideration and in appropriate circumstances examples of which are given below.

The suspension of an employee from their duties pending the completion of a formal investigation and disciplinary hearing may be judged appropriate if for example, their continued presence in the workplace puts themselves or others at risk or could hamper or compromise investigations.

Suspension is always on normal contractual pay. Normal contractual pay is calculated in accordance with National Conditions of Service. Advice should be sought from the Trust's HR Lead before seeking to change any pay arrangements that are already in place, for example car user allowance, overtime, bonus etc.

A decision to suspend an employee will usually be taken by the Headteacher, or their representative or designated Governor, who will arrange to meet with the employee and explain why suspension is being considered.

Any responses the employee may wish to give as to why they should not be suspended should be considered prior to a final decision being taken. An employee should be given the opportunity to be accompanied by a colleague or union representative provided this does not result in an unreasonable delay conducting the meeting.

In exceptional circumstances an employee may be instructed by *their line manager* to leave the workplace immediately and to stay away on normal contractual pay until further notice where:

In the opinion of the line manager in consultation with their Trust's HR Lead the employee's continued presence would be detrimental to the school's interests and

The Headteacher/CEO, designated Governor or Panel of the Governing Body, who has the authority to implement suspension from duty is not available and

The instruction is reported to the Headteacher/CEO, designated Governor as soon as possible thereafter so that they can determine whether the employee is to be formally suspended or reinstated in the workplace.

The confirmation of suspension letter must be sent by the Headteacher/CEO, designated Governor within three working days of the suspension date and the letter sent by special delivery to ensure receipt.

Where the employee concerned is the Head/CEO, the Chair of Governors will consult with the Trust's HR Lead before deciding whether to suspend.

4.2 Alternatives to suspension

Wherever possible, consideration should be given to temporary redeployment as an alternative to suspension.

The benefits of temporary redeployment are that it keeps the employee actively engaged in work during a period of uncertainty.

Where temporary re-deployment is implemented the Headteacher/CEO or designated Governor should confirm in writing to the employee why re-deployment was considered more appropriate than suspension.

4.3 Terms of suspension

Written confirmation of suspension must be sent by the Headteacher/CEO or designated Governor within three working days of the suspension date and the letter sent by special delivery.

The content of this letter will depend on individual circumstances but broadly should include the reason for the suspension and what the employee should and should not do during this period. For example, the employee will be prohibited from returning to their place of work without pre-arranged accompaniment. They must not speak to work colleagues, Governors, parents or students about the case, unless this person has been assigned as a support person or a representative for the employee.

If an investigation has been commissioned, the suspension letter may also include basic information about the investigation, for example, who has requested the investigation (the Commissioning Officer), who is undertaking the investigation (the Investigating Officer), what will be investigated, how that investigation will be undertaken and what methods will be used to gather evidence such as witness interviews, Internal Audit reports or relevant performance management documentation.

If on receipt of the investigation report the Commissioning Officer decides the matter should go to a formal disciplinary hearing the hearing will be arranged, in accordance with the timescale set out in paragraph 5.1.

4.4 Situations which may warrant a suspension or redeployment

It would be appropriate to suspend or redeploy an employee from their substantive post in the following circumstances;

- Following allegations of gross misconduct (see appendix A)
- A child protection related matter
- Where it is believed an employee's presence in the workplace may hinder or compromise the quality of an investigation into those allegations
- An employee's presence in the workplace places them and/or others at risk
- Alleged criminal activity outside the workplace which is under investigation by the police
- Allegations of theft or misappropriation of school property

4.5 Notes

Proposed action regarding allegations of misconduct or gross misconduct against a Trade Union Representative, must be discussed with a full time official of that union prior to taking steps to address the issue.

The Trust's auditors will be informed as soon as allegations regarding theft or misappropriation of school property become known

In the case of child safeguarding issues, the LADO should be contacted at the earliest opportunity and information regarding any allegations shared.

The examples above are illustrative and not exhaustive. The Headteacher/CEO or Panel of the Local Governing Body reserve the right to suspend or redeploy staff according to individual circumstances.

4.6 Employee requests of access during suspension

During suspension an employee must remain available to co-operate with ongoing investigations which may require their involvement through attendance at interview with the investigating officer. The employee will have a right to representation at such interviews.

If an employee is suspended from work and the terms of their suspension do not permit them to enter school premises, these terms should not prevent them from attending, as a witness, disciplinary or grievance hearings or appeals in respect of other cases not related to their own suspension.

Where the Commissioning Officer decides a formal disciplinary hearing is required, the employee on suspension should be given every opportunity to prepare their response to the allegations. This may involve the release of relevant documentation or permitting contact with colleagues who may be asked to appear as potential witnesses on behalf of the employee at a disciplinary hearing.

Contact details of a person who can guide and assist the employee on welfare and procedural matters during suspension should be provided. This could be a Business Manager, Senior Administrator or member of the SLT and be a focal point for questions or queries.

In addition, a senior school colleague who is unconnected with the issue will be given responsibility for maintaining contact with the member of staff during the period of suspension.

Depending on the circumstances and level of seriousness of the allegations a referral may be made to the relevant authority so that consideration may be given to the employees' inclusion on a list relating to the protection of vulnerable groups, namely the Disclosure & Barring Scheme (DBS). Further guidance can be sought from the Local Authority Designated Officer. (LADO)

An employee on suspension should be encouraged to get in touch with their trade union or their professional association and given the contact details of the school's Counselling Service provider if requested.

4.7 Monitor and review

The terms of the suspension or redeployment should be regularly monitored and reviewed by the Headteacher/CEO/Chair of Governors and adjustments made where appropriate.

If the terms of the arrangements are broken by the employee, management reserves the right to take further action that may be necessary, for example suspending an employee who has been redeployed. The employee must be advised of this change in writing.

A suspension can only be lifted by the Local Governing Body. Governors may formally delegate this responsibility to a Panel. The Panel with delegated responsibility shall only be provided with sufficient information to enable them to reach a decision and due regard should be given to the need for confidentiality of individuals involved in the circumstances of the suspension.

5. INVESTIGATIONS

5.1 Purpose

The purpose of an investigation is to undertake a fair and objective enquiry into a specified allegation or allegations against a school employee and by so doing establish as clearly as possible the facts.

Other than in exceptional circumstances disciplinary action will not be taken until the allegation or allegations have been fully investigated.

The Commissioning Officer will commission an investigation and specify the terms of reference. The Commissioning Officer will usually be the Headteacher/CEO or Chair of Governors, who will appoint an Investigating Officer(s). Care should be taken to ensure the Commissioning Officer and Investigating Officer can act impartially and are not required to undertake any other role in the process e.g. be a witness or serve on a subsequent disciplinary panel.

5.2 Scope of the investigation

An investigation is not a disciplinary hearing. An employee against whom allegations of misconduct have been made and any witnesses should be reminded of this before investigation interviews commence.

Witnesses should be reminded that one of the outcomes of the interview is that the information given may be used at a disciplinary hearing and that they may be asked to attend in person.

5.3 Timescales

Interviews should be conducted as soon as possible and arranged so that disruption to those involved is kept to a minimum. Conducting the investigation as soon as possible following the alleged incident minimises the risk of evidence contamination or compromising witnesses being able to accurately recall events.

5.4 Evidence from pupils

If it is necessary to formally interview pupils, parents/guardians must be advised and their consent obtained.

A parent/guardian may accompany their child during the interview but will be advised they should avoid intervening during the interview in a way which would prevent responses being made by the child.

Where it is felt necessary to interview a pupil as part of an investigation the employee's representative will be offered the opportunity to be present, if deemed appropriate. This will allow the representative to see that no leading questions are asked and avoid the necessity of interviewing the pupil more than once. Care should be taken to ensure the presence of the employee's representative is not prejudicial to the disclosures likely to be made by the pupil. If it is thought the presence of another adult may be intimidating, the employee's representative will instead be provided with a full transcript of the interview.

Wherever possible, a factual record of the discussion will be agreed to avoid the child being called as a witness at any subsequent disciplinary hearing.

5.5 Child protection issues: Incidents and/or allegations involving a child or young person under the age of 19 years

Children are protected from physical, sexual, verbal and emotional abuse under several statutes including The Children Act 1989. This Act expressly lays down specific procedures to be followed in circumstances where an incident has occurred and/or allegations have been made that an employee has emotionally or physically harmed a child.

In these circumstances, it is recommended that the Headteacher/CEO immediately seek advice from the Authority's Designated Safeguarding Officer (LADO).

It is essential that Headteachers/CEO or Chairs of Governors have due regard to the South West Child Protection procedures and Plymouth Safeguarding Children Partnership Procedures and acts in accordance with these documents.

If the investigation is taking place following the completion of a police investigation, it may be possible to obtain copies of police witness statement. The relevant police authorities will be able to advise further on this however the release of statements requires the agreement of the individual(s) concerned.

5.6 Confidentiality

The importance of confidentiality is paramount throughout the investigation and Investigating Officers should ensure that everything discussed is treated in strictest confidence. A request by an Investigating Officer for an employee to participate in an investigation is a reasonable management request. However, in some situations, a witness statement could be provided as an alternative.

5.7 Employee failure to co-operate

An employee at the centre of a potential allegation or allegations must co-operate with the investigating officer as part of the information gathering process. Wilful refusal to co-operate with an investigation is a disciplinary offence in itself. The implications of failing to co-operate or wilfully hinder an investigation may lead to further action being taken against the employee.

5.8 Right of an accompaniment

All employees being interviewed as part of a formal investigation process have the right to be represented at this interview by a recognised Trade Union official or professional representative or work colleague. (See Section 2 for further information on representation at informal meetings).

The definition of a Trade Union Official, according to the Employment Act 2002 is "someone who is employed by a trade union or an elected union official who has been certified by the union as having undergone suitable training or having the necessary experience to act as the worker's companion".

Requests for other categories of companion other than those specified in this section, for example a friend or relative will be considered but the right is reserved to decline such requests where it is felt such representation would have a negative impact on the investigation. Unless allegations are such that they could lead to a decision to dismiss for a breach of professional standards which in turn could lead to the employee having their professional registration withdrawn legal representation i.e. support of a solicitor will not be permitted.

Representation at a formal meeting will be restricted to one person only, except in exceptional circumstances.

5.9 Investigation report

Once an investigation is concluded, a written report will be produced. The report will include a summary of why the investigation was commissioned, explain who the Commissioning Officer and the Investigating Officer are, the terms of reference around the investigation and the methodology used to gather information. A conclusion will summarise the findings of the investigation. All relevant documents including any witness statements will be appended to the report. The Commissioning Officer will give consideration to a range of outcomes in response to the allegations and the investigation findings and decide what further action, if any, to take.

Specific terms of reference will be produced by the Commissioning Officer and passed to the Investigating Officer. The overriding aim of the investigation will be to gather and accurately record the facts. It should contain copies of relevant documents including witness statements, letters, e-mails, reports, etc. Witness statements should be signed and dated and notes taken at all formal meetings.

The Commissioning Officer will then decide what further steps, if any, to take. Further guidance can be sought from the Trust's HR Lead.

5.10 Potential investigation outcomes

- **No case to answer**
It may be that having conducted a full investigation, the Commissioning Officer decides that there is no foundation to the allegations and that there is consequently no case to answer. In such circumstances the decision and the reasons supporting the decision will be confirmed in writing and a copy placed on the employee's personal file.
- **Remedial action**
Adjustments and or interventions such as further training, supervision, a referral to occupational health or counselling may be provided. Remedial action may also involve temporarily transferring the employee to another post. However, this can only occur if another suitable post can be identified and the employee agrees to the move.
- **Mediation**
A formal structured process of mediation, requiring the employee's participation aimed at identifying a mutually agreeable way forward or solution. Mediation should be undertaken by a person with relevant experience. This could be the employee's line manager/ supervisor or if appropriate, another manager with no previous involvement in the case.
- **Further investigation**
Where the Commissioning Officer considers it necessary to identify further information or clarify facts, additional investigations may be conducted. In these circumstances consideration will be given to whether such further investigation involves issues outside the existing terms of reference. If this is the case the terms relating to the investigation and employee's suspension or temporary redeployment may need to be redefined and any changes confirmed in writing.
- **Formal disciplinary action**

If formal disciplinary action is recommended by the Commissioning Officer, the formal disciplinary procedure will apply, and the matter will be referred to the Headteacher/CEO or Governor's Staffing Panel.

6. FORMAL DISCIPLINARY PROCEDURE

The Trust's adopted formal disciplinary procedure complies with relevant sections of the Employment Act 2002 and ACAS Code of Practice.

6.1 Inform the employee in writing to attend the meeting

The first stage of the formal process is to inform the employee in writing they are required to attend a disciplinary hearing before either the Headteacher/CEO or Governor's Staffing Panel, including the time, date and location of the hearing. This letter should also contain the following:

- An outline of the allegation or allegations, the level of seriousness (i.e. potentially misconduct or gross misconduct) and the possible outcomes if the allegations are 'proven' (i.e. subject to a balance of probability test) at a disciplinary hearing. For example, in proven cases of gross misconduct, one of the potential outcomes is summary dismissal.
- Who will be present at the hearing and their role.
- The employee's statutory right to be represented at a formal disciplinary hearing by a recognised Trade Union representative or work colleague.

The letter will be sent by special delivery to the employee a minimum of five working days prior to the hearing.

The investigation report will normally be made available to all parties as part of a bundle of documents prior to a disciplinary hearing.

Employees should be reminded that if they fail to attend the hearing without reasonable notice and good reason, it will proceed in their absence. In these circumstances the employee must be advised they can be represented in their absence by a Trade Union representative or work colleague and/or provide a written submission.

Depending on the circumstances a formal hearing can be conducted either by the Headteacher/CEO or a Panel of Governors (minimum of three, none of whom will have had direct involvement in the case) acting as the Governor's Staffing Panel:

- If the Headteacher/CEO has not undertaken the role of Investigating Officer, they may hear the matter (*N.B. In delegating this power to the Headteacher/CEO, Governors must decide whether this will apply to all cases or only those where the likely outcome falls below dismissal*).
- A Governor's Staffing Panel will conduct hearings where allegations of gross misconduct have been made and where the outcome could be dismissal. The Trust's HR Lead will be present in these circumstances.
- Allegations that are not considered to be potential gross misconduct may also be heard by a Governor's Staffing Panel where it is believed it will provide a more impartial and/or objective forum.
- A Governor's Staffing Panel will hear the matter if the Commissioning Officer(s) is of the view circumstances warrant it.

6.2 Hold disciplinary meeting

The sequence of events detailed in Appendix 2 and 3 will be followed for all disciplinary and appeal hearings.

The sequence allows for procedural issues, objections and adjournments to be raised. The aim of the sequence is to promote transparency, fairness and consistency in the application of this policy. A note taker will be present during the hearing.

The Investigating Officer(s) will usually put forward the case against the employee at a disciplinary hearing.

The Trust's HR Lead will be invited to advise the Panel at the disciplinary hearing.

A Chair will be nominated from amongst the panel members.

Requests for an adjournment by the employee, their representative or management should be made to the Chair and will not be unreasonably refused, unless in the opinion of the Chair their frequency disrupts proceedings. Care will be taken to ensure adjournments are not used as a way of avoiding answering questions.

The Panel may wish to adjourn to deliberate the facts of the case before reaching a decision or assess whether particular matters require further clarification. The employee's personnel file may be examined during final deliberations and any other existing disciplinary sanctions which are not time-expired may be taken into consideration, if relevant to the current case.

6.3 Inform the employee of the outcome

Where reasonable and practicable to do so, the employee will be notified by the Chair of the decision verbally on the day.

The decision will be confirmed in writing within five working days of the meeting and sent to the employee by special delivery.

The confirmation letter will provide details of the findings, including the reason for the sanction, any improvement in conduct that is required and specify the time scales for improvement, if appropriate. The letter should also give guidance on how to appeal.

The outcome letter should also confirm failure to improve could lead to further disciplinary action which may ultimately lead to dismissal.

The situation should be monitored and reviewed regularly after the disciplinary hearing and processes put in place to ensure any further issues identified are reported.

If compulsory transfer or demotion is incorporated into the sanction, the employee must be advised of this verbally at the hearing and informed of this action in the confirmation letter.

6.4 Notify the employee of their right to appeal

An employee has a right of appeal against a disciplinary decision and details of how to appeal should be incorporated in the disciplinary hearing outcome letter.

Any appeal must be submitted in writing to the Clerk to Governors within five working days of receipt of the disciplinary hearing outcome letter.

The date of the appeal hearing will be confirmed with the employee within ten working days of receipt of the appeal letter.

Wherever reasonably practicable, appeals will normally be heard within four weeks of the appeal being lodged.

The appeal letter should clearly state the grounds on which the employee is appealing against the disciplinary decision.

Appeal hearings will be structured around the grounds of the employee's appeal and will not be a full re-hearing of the case. However, in addition to considering the employee's specific grounds of appeal the appeals panel will also consider;

- Whether the school's agreed procedure has been followed and if not, has any procedural fault(s) affected the fairness of the outcome?
- Have all relevant facts been taken into consideration? Were the facts substantiated? Has any significant new evidence emerged since the original decision?

- Were responses made by the employee including any mitigating circumstances properly weighed against management's case?
- Is the disciplinary sanction reasonable and proportionate in relation to the act of misconduct?

6.5 Appeal hearing

Appeals will be heard by a Governors Appeal Panel containing at least an equivalent number of governors to the Governors Staffing Panel.

The Appeal Panel will consist of governors who have not taken part in the original decision, one of whom will be nominated to act as Chair. The Trust's HR Lead will be invited to support the Appeal Panel.

The appeal may result in a variation or cancellation of the original decision. However, the level of the sanction cannot be increased. The decision of the Appeal Panel will be final.

Notification of the Appeal Panel's decision and reasons for that decision will normally be given verbally to all parties concerned and will always be communicated to the employee within five working days from the date of the disciplinary hearing. This letter will be sent to the employee by special delivery.

Where the outcome is to uphold an appeal against dismissal, the Chair will notify the Headteacher in writing within five working days, giving the reason for the determination. The Chair of Governors will rescind the notice of dismissal.

7. DEALING WITH NON-ATTENDANCE

The employee must take all reasonable steps to attend the meeting. ACAS guidance confirms employers should agree to rearrange a disciplinary meeting if the employee or their representative is unable to attend.

In accordance with the guidance, the deferment of the hearing need only be for a maximum of five days.

Sickness may be a reason given for non-attendance but is only valid if the employee is too ill to attend a formal meeting or disciplinary hearing. An employee may be too sick to work but fit enough to attend such a meeting. An occupational health referral must take place if the employee is certificated as sick by their general practitioner or specialist.

8. DISCIPLINARY SANCTIONS

8.1 No case to answer

Where the investigation provides evidence to show the employee is not guilty of the alleged misconduct an outcome of no case to answer will be given. This outcome may also be appropriate where the investigation fails to establish sufficient evidence to support the allegations made. In these situations, no further action will be necessary and any reference to disciplinary action is removed from the employee's file.

8.2 Written or final written warning

Where investigations provide evidence to show that the alleged misconduct took place, or on the balance of probability is likely to have taken place, consideration will be given as to whether a written or final written warning will be issued. A written warning will be valid for twelve months and will be time expired after this period, providing there is no repetition of the offence. In accordance with recommendations contained within the Warner Report relating to staff employed in sensitive posts all warnings should remain on the employee's personal file indefinitely. This is likely to apply to all school employees where an enhanced DBS check is required. In such cases, Warner Report, Recommendation 19, stipulates employers need to keep a full record of disciplinary offences on a personal file for the purpose of future employment references in appropriate circumstances.

In cases where capability or conduct is at the limit of acceptable standards, the warning may be extended beyond twelve months. Sanctions may also include demotion and permanent redeployment. If such a decision is taken the employee must be notified in writing of the reasons and whether such measures are being applied on a permanent

or temporary basis. The time limits specified for written and final written warnings can be modified in exceptional or extenuating circumstances.

8.3 Dismissal (with notice or pay in lieu of notice)

In cases of gross misconduct (see Appendix 1) or repetition of misconduct the decision may be taken to dismiss with notice.

This sanction may be used in cases where a previous written warning has not resulted in the required level of improvement in behaviour or performance.

This sanction may require the employee to work their notice period or be paid in lieu of notice and terminating employment at an earlier date.

8.4 Summary Dismissal

This sanction will be administered in cases of proven gross misconduct (see Appendix 1).

8.5 Reporting obligations

Lists relating to the protection of vulnerable groups will be updated in the light of any decision to dismiss in accordance with the Protection of Children Act 1999. The Disclosure and Barring Service (DBS) should be informed following dismissal for any child protection related matter.

The Trust is further required to report cases to the Department for Education and Teaching Regulations Agency where teachers alleged misconduct is so serious that it warrants a decision on whether the teacher should be prevented from teaching.

The Chair of Governors will issue notice of dismissal within 14 days. In the case of Summary Dismissal this will be with immediate effect.

9. OTHER REMEDIES

In addition to the above sanctions a number of other remedies may be considered by the Staffing Panel or Appeal Panel, for example:

- Temporary or permanent redeployment that will take effect from the date of the disciplinary confirmation letter and where appropriate with no protection of pay.
- Withhold incremental progression.
- Demote an employee within the same job with no protection of pay.

Repayment of fraudulent claims, in accordance with Trust's Financial Regulations

10. DISCIPLINARY MATTERS RELATING TO A TRADE UNION OFFICIAL

Normal disciplinary standards apply to the conduct of employees who are Trade Union Officials and Learning Representatives. However:

No disciplinary action will take place against a Branch Official, Steward, Learning Representative or Safety representative until a full time official of the Union concerned has been notified.

This does not prejudice management's right to suspend an employee on full pay pending an investigation, if such action is considered appropriate, as suspension is not a disciplinary sanction.

11. OVERLAPPING DISCIPLINARY AND GRIEVANCE ISSUES

During the disciplinary process an employee may only raise a grievance about disciplinary action when;

- They do not agree that the disciplinary action taken or contemplated, for example dismissal, is due to their conduct or capability; and/or

- Where the employee considers that the disciplinary action constitutes unlawful discrimination.

Where the grievance and disciplinary are unrelated:

- Disciplinary and grievance matters should be kept separate, wherever practical and reasonable to do so.
- Depending on the nature of the grievance another senior member of staff may be brought in to deal with the grievance case independently of the disciplinary case.

Where grievance and disciplinary matters are related and linked:

For cases where the employer is contemplating dismissal, for example in allegations of gross misconduct, the Complainant must be given the opportunity to appeal against the grievance outcome, in accordance with the ACAS Code of Practice.

The grievance meeting and any subsequent grievance appeal meeting should take place before the disciplinary appeal hearing or within the same meeting. This may mean the disciplinary process is delayed for a short period in order to resolve the grievance. The employee must be notified in writing of the delay and reasons given.

Whilst both issues can be dealt with at the same meeting, it will be difficult for the complainant to appeal against the grievance outcome if they have been dismissed by the Trust at the same meeting. (Refer to the Trust's Grievance Policy and Procedure for more information on grievance matters).

Where the employee raises a grievance after the disciplinary appeal hearing, the full statutory grievance procedure should be followed unless the employee gives their written consent for the modified grievance procedure to be used.

12. NOTIFICATION OF PROFESSIONAL BODIES

The Trust will report to the appropriate statutory or professional body any serious act of misconduct or gross misconduct where appropriate.

Please seek further guidance or information from the Trust's HR Lead if necessary.

13. APPENDICES

13.1 Appendix 1: Examples of potential gross misconduct

The public is entitled to demand of a school employee conduct of the highest professional standard, and public confidence in their integrity would be shaken were the least suspicion to arise that they could in any way be influenced by improper motives. Failure to uphold such standards is considered to be potentially gross misconduct.

- Stealing from the school or a colleague
- Theft, dishonesty, fraud, misuse of school property, or deliberate falsification of records
- Sexual misbehaviour
- Serious insubordination
- Deliberate falsification of claims for financial reimbursement with the intention of obtaining from the school a payment to which the claimant is not entitled
- Deliberate and/or malicious damage to school or property
- Assault of any kind by an employee on any person
- Knowingly breach financial regulations or security
- Knowingly refuse to follow a reasonable formal legal management instruction
- Serious negligence which causes unacceptable loss, damage or injury, or acting in a manner dangerous to others
- Harassment intimidation or bullying of any kind including sexual or racial harassment
- Publication or distribution of offensive material relating to race, sex, age or religion
- Knowingly disclose matter of a confidential nature or break a trust to the disadvantage of the school
- Failure to uphold the highest professional standard by the influence of improper motives
- Unauthorised entry to computer records and deliberate misuse of the school computer resources and telephone services
- Serious breach of Data Protection Policy and Guidelines
- Obscene or indecent behaviour
- Serious incapability through alcohol or being under the influence of drugs
- Serious breaches of the school's Health & Safety Policy
- Bringing the school into serious disrepute
- Misuse of the school property or name
- Breach of confidence
- Failure by an employee to report actual or suspected physical or sexual abuse or other inappropriate behaviour of a child or another vulnerable person by another employee or person
- Serious breaches of Professional Codes of Practice
- Any failure to disclose any involvement with the police or courts including but not limited to existing (or pending) criminal conviction, caution, reprimand or final warning which in the view of the school impacts on their ability or suitability to undertake their role
- Posting uploading, forwarding, videoing, copying or adding inappropriate derogatory or defamatory comments, photographs, video or audio clips relating to or about the school, any fellow employee, parent/guardian, governor, pupil or any other party related to the school onto or for use on public chat-rooms, blog sites, social networking or professional networking sites

This list is not intended to be exhaustive and there may be other breaches of conduct that may be deemed so serious as to represent acts of gross misconduct.

13.2 Appendix 2: Sequence to be followed at a Disciplinary Hearing

Documentation used at and generated by the disciplinary hearing will be circulated to members of the Disciplinary Panel, HR representative, and all relevant parties in advance of the hearing. This must include a list of the witnesses to be called by both the school and employee's side at the disciplinary hearing.

The hearing will be attended by a Governors Panel (minimum of 3 Governors) and Adviser to the Panel, the Employee and their representative if required; and the investigating officer(s) who may be accompanied by a Human Resources Adviser (acting as 'management'); plus, witnesses.

SEQUENCE OF EVENTS:

- 1 Introductions**
Including procedural issues to be covered and confirmation of witness lists.
- 2 Management Case**
The manager or management's representative will put their case in the presence of the employee and/or representative and may call witnesses.
- 3 Cross Examination by Employee**
The employee or representative will have the opportunity to ask questions of the manager and/or witnesses on the evidence given by them.
- 4 Questions from the Panel**
The Panel and the Human Resources Adviser may ask questions of the manager and/or witnesses.
- 5 Employee Case**
The employee or representative will put their case including any mitigation in the presence of the manager and may call witnesses.
- 6 Cross Examination by Management**
The manager shall have the opportunity to ask questions of the employee and/or witnesses on the evidence given by them.
- 7 Questions from the Panel**
The Panel and their HR Adviser or nominee may ask questions of the employee and/or witnesses.
- 8 Summing Up**
The manager and/or adviser and the employee or their representative will have an opportunity to sum up their cases if they so wish, the employee or representative statement being last.
- 9 Withdrawal**
All parties except the Panel and adviser will withdraw to consider the evidence and decide on an outcome.
- 10 Recall all parties to clarify points of uncertainty, if necessary**
The Panel may recall the parties to clear points of uncertainty on evidence already given. If recall is necessary, all parties are to return notwithstanding the possibility that only one of them is concerned with the points giving rise to doubt.
- 11 Decision and Outcomes**
Notification of the Panel's decision will normally be given verbally to all parties concerned on the day and the reasons for the decision confirmed in writing within five working days from the date of the disciplinary hearing. This letter should include the right of appeal and be sent to the employee by special delivery.

13.3 Appendix 3: Sequence to be followed at all appeal hearings

Documentation used at and generated by the disciplinary hearing will be circulated to the Appeal Panel, HR representative, and all relevant parties in advance of the appeal hearing. This must include a list of the witnesses to be called by both the management and employee's side at the Appeal Hearing.

The hearing will be attended by Appeal Panel Members (minimum 3 members and at least the same number as the Governors' Staffing Panel), Adviser to the Panel; the Employee and their representative; the Chair from original Hearing who may also be accompanied by their HR Adviser plus any witnesses.

SEQUENCE OF EVENTS:

- 1 Introductions**
Including procedural issues to be covered and confirmation of witness lists.
- 2 Employee Case**
The employee or representative will put their grounds of appeal in the presence of the manager and may call witnesses.
- 3 Cross Examination by Management**
The manager shall have the opportunity to ask questions of the employee and/or witnesses on the evidence given by them.
- 4 Questions from the Appeal's Panel**
The Appeal Panel and the HR Adviser or nominee may ask questions of the employee and/or witnesses.
- 5 Management Case**
The manager or management's representative will put their response to the grounds of appeal in the presence of the employee and/or representative and may call witnesses.
- 6 Cross Examination by Employee**
The employee or representative will have the opportunity to ask questions of the manager and/or witnesses on the evidence given by them.
- 7 Questions from the Panel**
The Appeal Panel and the Human Resources Adviser or nominee may ask questions of the manager and/or witnesses.
- 8 Summing Up**
The manager and/or adviser and the employee or representative will have an opportunity to sum up their cases if they so wish, the employee or representative statement being last.
- 9 Withdrawal**
All parties except the Appeal Panel and their Adviser will withdraw to consider the evidence and decide on an outcome.
- 10 Recall all parties to clarify points of uncertainty, if necessary**
The Appeal Panel may recall the parties to clear points of uncertainty on evidence already given. If recall is necessary, all parties are to return notwithstanding the possibility that only one of them is concerned with the points giving rise to doubt.
- 11 Decision and Outcomes**
Notification of the Appeal Panel's decision will normally be given verbally to all parties concerned and will be communicated to the employee in writing as soon as possible. In the case of a decision not to uphold the employee's appeal, reasons will be provided in writing. This letter should be sent to the employee by special delivery.