

Disciplinary procedures relating to misconduct

This policy, should be read, alongside the 'Common Principles'. These 'Common Principles' outline the need for confidentiality, the right to representation by a Trade Union representative or workplace colleague, the procedures for and management of Formal Meetings, and the procedures for appeals against formal warnings and dismissal decisions.

8.1. Introduction

We expect our employees to observe and maintain the highest standards of conduct. Managers and Senior Leaders are expected to address conduct issues in the course of day-to-day management of staff. The procedures set out provide fair and effective arrangements for addressing any instances of alleged or suspected misconduct.

Disciplinary procedures apply principally but not solely to conduct at work. The procedures can be utilised in consideration of activities and behaviour outside the workplace, which may adversely affect the suitability of the employee to do their job, or the relationship between the Academy Trust and the employee, or the relationship between the employee and work colleagues, pupils, parents or members of the community.

This policy applies to all employees of the Academy Trust with the exception of:

- Support staff in their probationary period. Disciplinary issues during the probationary period should be handled under the Academy Trust's Probationary Procedure.
- Agency workers, where conduct issues should be addressed with the employing agency.

8.2. Misconduct

There are two kinds of misconduct:

1. Misconduct – breaches of Academy Trust rules and procedures which may attract a range of disciplinary sanctions up to and including dismissal; and
2. Gross misconduct – breaches that are considered to be so serious that the basis of trust between the Academy Trust and the employee is seriously damaged or destroyed, and which will normally result in dismissal.

8.3. Management action prior to the Formal Stage

Misconduct involving minor infringement of rules and standards is best dealt with by management advice and guidance, coaching and counselling, rather than by formal disciplinary action. Managers and Senior Leaders should discuss work

problems with employees at an early stage with the objective encouraging them to improve and resolve issues to the mutual benefit of the school and the employee.

In deciding whether an attempt should be made to resolve the issue through management action, account will be taken of relevant issues, such as:

- the nature of the misconduct;
- previous management interventions;
- length of service with the Academy Trust;
- previous disciplinary record(s); and
- whether there is a reasonable prospect of management action securing an improvement in the employee's conduct.

In circumstances of serious or repeated breaches the Academy Trust will initiate action under the formal procedure.

Taking management action prior to the Formal Stage

Problems should be discussed with the objective of helping the employee to improve his/her conduct/behaviour. The Manager or Senior Leader should meet with the employee to make clear:

- what needs to change;
- the standards, conduct and behaviour expected;
- how conduct will be reviewed;
- over what period of time the conduct will be reviewed; and
- what action will be taken if s/he fails to improve.

Documentation and Future Action

The Manager or Senior Leader will confirm in writing to the employee:

- the unacceptable conduct/behaviour;
- the summary of the informal discussions;
- the corrective action to be taken by the employee;
- any action to be taken by the manager;
- the arrangements to review the conduct and over what period;
- that informal action may lead to formal action if unacceptable behaviour/conduct is not addressed where appropriate.

8.4. Formal Procedure

Sanctions

Disciplinary sanctions, which may be taken, are:

- First written warning
- Final written warning
- Relegation to a lower salary scale point within the employee's grade*
- Withholding a salary increment*
- Combination of the above
- Dismissal with or without notice
- Transfer to another job (within the school) as an alternative to dismissal
- Demotion to another job as an alternative to dismissal

**In the case of teachers -the Academy Trust can only impose such sanctions as are permitted by the Schools Teacher Pay and Conditions Document.*

Any formal action will be recorded on an employee's personal file and in certain circumstances may be declared to a statutory body.

Demotion and transfer may be offered as an alternative to dismissal exceptionally. This would require agreement with the employee.

Sanctions such as withholding an increment for one year or relegation to a lower scale point may also be used.

Written warnings must state the period of time over which the warning will be regarded as 'live' for the following periods of time:

- First written warnings –12 months from date issued
- Final written warnings – two years from date issued

An employee's conduct must be satisfactory during this time and any lapses in conduct will result in a more severe penalty. There may be circumstances where it is appropriate to take account of previous expired warnings at the time of further misconduct.

Documentation relating to the disciplinary action will be retained on the employee's personal file after the expiry of the disciplinary action taken.

Contractual Notice

An employee who is dismissed from the Academy Trust's service will normally be entitled to contractual notice or pay in lieu of notice except where the dismissal is for gross misconduct where dismissal will be without notice or pay in lieu of notice.

Confidentiality

Confidentiality and privacy will be maintained as far as possible during the disciplinary process.

Correspondence

All correspondence with employees subject to disciplinary action (including letters convening hearings, details of allegations, documentary evidence and decisions of hearings) should be delivered either by 'hand' on behalf of the Academy Trust, or by recorded or registered post or by email. A further copy should also be sent through the ordinary post.

Records retention

Records must be kept detailing disciplinary action taken (including the nature of any breach of disciplinary rules, the action taken and reasons for it, any appeal lodged and its outcome; and any subsequent developments) and will be retained on the employee's personal file.

In cases of dismissal, witness statements and other evidence gathered as part of the investigation must be kept on the personal file for six years from the date of the termination of the contract except in the case of special schools, when this documentation must be kept on the personal file for twenty years from the date of the termination of the contract

Where following an investigation a decision is taken that formal disciplinary action is not appropriate and the issue is handled via management action relevant documentation will be kept on the personal file.

Where following an investigation or hearing a decision is taken that there is no case to answer, the employee and, where appropriate, the trade union representative will be notified in writing within five days of the decision. Only a copy of the letter advising the employee of the outcome will be kept on the personal file. All other documentation will be destroyed immediately.

Record Retention in cases of allegations against staff which are related to child protection

In the case of allegations relating to safeguarding children the outcome letter should include details of how the allegation was followed up and resolved, the decisions reached [substantiated, false, unfounded, unsubstantiated] and action taken.

Allegations that are found to be malicious should be removed from personnel records and any that are not substantiated, are unfounded or malicious should not be referred to in employer references.

For allegations that are substantiated and unsubstantiated the following applies: As regards the files of employees who have undergone a child abuse allegation under the Brent local safeguarding children board procedures "Managing

Allegations against Staff and Volunteers working with Children and Young People" or any replacement to these procedures, then the files should be kept for a period of ten years from the termination of their employment.

Criminal Offences

Where an employee is the subject of a criminal investigation or a charge is pending regarding a criminal act, this will not normally be grounds to delay or prevent a Formal Meeting taking place in accordance with these procedures. However, where a request is made by the police or Crown Prosecution Service to defer taking action, this may be considered. Any deferral of disciplinary action in response to such a request should not continue on an open-ended basis.

Managers, Senior Leaders, and Investigating Officers must not rely on obtaining evidence from the police, but should conduct their own investigations prior to the Formal Meeting.

Suspension

Suspension is not a disciplinary action and should only be used during the investigation/disciplinary process when it is clearly inappropriate for the employee to remain in the workplace. Only a Headteacher or Executive Headteacher can suspend an employee; if necessary, a Senior Leader may send the employee home on special leave pending a decision on formal suspension that should be taken the following working day.

Suspension will normally be with full contractual pay.

Employees must be available to the Academy Trust at all times during the paid suspension period. A suspended employee must:

- Not enter the premises of any school within the Academy Trust without written permission;
- Not use Academy Trust systems, or undertake Academy Trust business, without written permission;
- Not contact or approach Academy Trust employees, or pupils (or their parents) at any Academy Trust school;
- Attend interviews during the suspension and co-operate with the investigation;
- Return all Academy Trust equipment;
- Not engage in other work (paid or unpaid) during the contracted working time with the Academy Trust.

The individual or body that suspended the employee will confirm in writing the reasons for suspension and will advise the employee how long the investigation is

likely to last. Suspensions should be for as short a time as possible and should be reviewed on a regular basis.

Suspensions should be lifted promptly where there is no risk of prejudice to the investigation, or management consider there is no case to answer. The Executive Headteacher, Headteacher / Head of School can end a suspension, or an Appeals Panel following an appeal .

An employee who is medically unfit for work during suspension will be treated as absent for reasons of sickness and not on suspension. Pay may be withheld if an employee does not cooperate with the investigation during the period of suspension.

Child Protection: allegations against staff

Allegations about the abuse of children must be handled in accordance with the procedure of the Local Safeguarding Children Board (LSCB).

Where conduct issues relate to the safeguarding of children, it is not appropriate to terminate disciplinary action if the employee resigns before this is completed.

Qualifications and Compliance Issues

Employees in particular professions may need to hold a specific regulatory classification and/or maintain certain standards to carry out their job (e.g. registration with a professional organisation). Where this is the case, the Academy Trust may have a duty to report incidents of alleged professional misconduct or serious performance issues to the appropriate registration authority or statutory body.

If a statutory body is involved (for compliance/regulated posts), it is a requirement that serious allegations must be reported to it whilst disciplinary action is being taken against an employee.

8.5. Applying disciplinary procedures

Timescales

All parties involved in disciplinary proceedings have an obligation to co-operate in ensuring that processes and reasonable timescales are followed.

Investigation

Where an allegation is made against an employee or if misconduct / gross misconduct is suspected, the Headteacher is responsible for appointing an Investigating Officer and determining who they will report to (themselves, a Manager or a Senior Leader). Normally an employee will be informed in writing about any allegations as soon as possible, save exceptional circumstances.

Anonymous allegations made against an employee are not normally investigated unless the Headteacher or Chair of the Local Governing Body considers by exception otherwise.

Employees are required to co-operate with the investigation and further disciplinary action may be taken against an employee who refuses to comply with a reasonable management instruction in relation to an investigation.

A written record of all investigation interviews and hearings must be made. It will not be a verbatim record but will accurately reflect all of the issues raised at the interview/hearing.

Following an investigation interview the employee/witness (es) must be asked to sign and date the interview record as being an accurate record of the interview. Any disagreement concerning the record should be annotated in the document by the employee/witness (es) and reflected in the investigation report.

The investigation should normally be completed within one month.

Investigation report

The Investigating Officer will produce an investigation report as soon as practicable and present it to the individual previously identified by the Headteacher. The report will give details of allegations, evidence, mitigation findings and recommendation on whether the case should proceed to a disciplinary hearing. The employee's account of the events, witness statements and supporting documentation should be attached to the report.

Following consideration of the investigation report, a decision will be taken as to whether a formal disciplinary hearing is required. Where it is decided not to proceed to a formal hearing, the employee will be informed.

Disciplinary Hearing

Any formal disciplinary hearing will be convened and take place in accordance with the processes for Formal Meetings that are set out in the Common Principles.

8.6. Appeals

An employee has the right of appeal against disciplinary action taken under this procedure. An appeal may be lodged on one or more of the following grounds:

1. **Procedure** – where failure to follow the correct procedure has had a material effect on the decision;
2. **The facts of the case** – where the Headteacher or panel of the Governing Body/Management Committee come to a conclusion on a material point of fact, which no reasonable person could have reached;
3. **Sanction** – where no reasonable person conducting the disciplinary hearing would have decided the particular sanction given the circumstances of the case; or
4. **New evidence** is available that could not have reasonably been raised at the disciplinary hearing and the absence of which had a material effect on the decision.

Appeals will not be allowed on any other grounds.

Appeals, must be submitted, in accordance with, and would be heard in accordance with, the procedure set out in the Common Principles.