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Academies Trust

# Disciplinary Procedure

## Policy details

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## 1.0 Purpose

1.1 This procedure is designed to help and encourage all colleagues of Co-op Academies Trust (our Trust) to achieve and maintain high levels of conduct and to ensure fairness, equity and consistency in the management of any concerns relating to their conduct.

1.2 This procedure has been drawn up to comply with the ACAS [Code of Practice](#) which sets out the principles for handling disciplinary situations in the workplace, and complies with relevant legislation. In the event of questions arising regarding the application of this procedure, the ACAS Code of Practice and ACAS Guide may be referred to.

1.3 This procedure will be applied with due consideration to our Trust's Equality, Diversity & Inclusion Policy and our co-operative values.

## 2.0 Applicability

2.1 This procedure applies to all colleagues in our Trust, whether permanent or on a temporary/fixed term contract. It does not form part of any terms of conditions of employment. It does not apply to agency workers, contractors or volunteers.

2.2 Separate procedures exist for dealing with matters that arise not caused by misconduct, for example the Capability Procedure or Supporting Attendance Policy. Our Trust's policy "Allegations of abuse against staff" and "Induction & Probationary Policy" should also be referred to in relevant cases.

## 3.0 Roles and responsibilities

3.1 Headteachers (which includes Heads of School, Principals and Executive Headteachers), Senior Leaders, and the Regional Directors, other Trust SLT members and Trust CEO (or the person to whom they have delegated responsibility) are responsible for managing the conduct of colleagues in accordance with this procedure. They must ensure that colleagues are aware of the expected levels of conduct as set out in the Teachers' Standards (if applicable), Colleague Code of Conduct, other Trust policies, and any local rules or regulations specific to their job or work area. The term "Headteacher" is used throughout this policy to refer to the designated senior person responsible.

3.2 Where concerns regarding conduct arise, line managers should seek advice from HR at an early stage.

3.3 Colleagues are responsible for adhering to the expected levels of conduct as set out in the Teachers' Standards (if applicable), Colleague Code of Conduct, other Trust policies, and any local rules or regulations specific to their job or work area, including any reasonable management instructions.

## 4.0 Principles

4.1 Misconduct is conduct that falls below the expected level; which may involve a colleague breaking specific rules about behaviour or conduct. There may be occasions when negligence or failure to act amounts to misconduct or "gross misconduct". Gross misconduct is very serious misconduct that may lead to dismissal without notice (summary dismissal).

4.2 All colleagues are expected to observe the levels of conduct, behaviour, and other rules that have been established for the well-being and safety of all and the efficient running of our Trust and its academies. They are required to inform the Headteacher of any relationship or association that may affect our Trust's ability to safeguard children.

4.3 It is expected that minor misconduct will normally be resolved informally through effective management practice by way of discussion, advice and guidance. A note of the discussion may be confirmed in writing (e.g. in a management note of guidance) see section 5. However, where this approach has been tried and has not worked, or where the misconduct is more serious, formal disciplinary action will be considered.

4.4 All allegations of misconduct will be investigated before any disciplinary action is taken to establish the facts of the situation.

4.5 The colleague will be advised of the allegations of misconduct and will be given the opportunity to state their case and present relevant evidence at a disciplinary hearing before any decision is made.

4.6 All colleagues will have the right of appeal against any formal disciplinary sanction.

4.7 At all stages of the formal process the colleague will have the right to be accompanied by a trade union representative or work colleague. The companion should be allowed to address the meeting in order to:

- put forward the colleague's case
- sum up the colleague's case
- respond on the colleague's behalf to any view expressed at the hearing
- confer with the colleague during the meeting.

The companion does not, however, have the right to answer questions on the colleague's behalf, address the hearing if the colleague does not wish it, or prevent the employer from explaining their case.

4.8 This Procedure will be implemented in accordance with the Equality Act 2010, in respect of which our Trust will make reasonable adjustments where required. For example, if there are any disability or language issues affecting the colleague or their representative these will be reasonably addressed so that any formal proceedings can take place fairly.

4.9 Information relating to formal proceedings will be kept confidential. Confidentiality should be maintained during all stages and throughout the Disciplinary Procedure and all colleagues must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter. Any failure to do so may be investigated in accordance with this procedure.

4.10 Our Trust will comply with requirements to refer relevant formal disciplinary action taken under this procedure to relevant services or professional bodies. For example if an allegation is connected to the risk of harm, or actual harm to a child then the LADO will be informed. The Disclosure & Barring Service (DBS) will be informed, and the Teaching Regulation Agency will be informed if the allegation involves a teacher, if the allegations are upheld following investigation and hearing (including any appeal).

4.11 The timescales within this procedure may be amended by mutual consent.

4.12 If a colleague resigns where an investigation or formal proceedings are being considered or have commenced, the proceedings should be completed in the case of matters which may need to be referred on (e.g. fraud or safeguarding), and it may be appropriate to continue to an appropriate conclusion at the discretion of management in other instances.

4.13 If a colleague raises a grievance during a disciplinary process, advice from a Regional HR Manager must be sought on how to proceed. The Regional HR Manager may also seek legal advice.

This shall be considered on a case by case basis and it may be appropriate to:-

- temporarily suspend the disciplinary process to deal with the grievance, or
- continue without temporarily suspending the disciplinary process and hear the grievance separately.

Due consideration will be paid to the [ACAS guide on Discipline and Grievances at Work](#)

4.14 Please note extra care should be taken when distributing papers in advance of a hearing. In line with GDPR, sensitive personal data must be processed securely and all sensitive information should therefore be hand delivered or posted by recorded delivery with a return address in case of any postal issues. Please ensure all tracking evidence is retained to confirm direct receipt from intended recipients.

## 5.0 Dealing with misconduct informally

5.1 Line Managers should be aware of any concerns relating to the conduct and behaviour of the colleagues they line manage through normal day to day management. Where minor concerns occur (which are over & above those dealt with on a purely verbal and unrecorded basis), with the advice of the Headteacher / SLT members, these should normally be raised with the colleague on an individual basis to try to restore and maintain a satisfactory level, addressing the following points:

- Set the level – the Line Manager should bring to the attention of the colleague how they are failing to meet the required level of conduct and of the concerns that exist;
- Seek an explanation - to provide the colleague with an opportunity to explain why they are not meeting the required level of conduct and to discuss the acceptability of the explanation(s);
- Require improvement - to advise the colleague what they are expected to do to bring about improvements in conduct or behaviour. Outline any management action and support and give a timeframe within which the colleague can reasonably be expected to modify or change their behaviour;

- Warn of the consequences - of failure to improve, to meet and sustain the level of behaviour or conduct required, such as formal action under the disciplinary procedure.

5.2 The main points discussed will be noted and a copy provided to the colleague in a "Management Note of Guidance" (MNOG). Support with writing a MNOG is available from your Regional HR Manager. A copy of the MNOG will be placed on the colleague's file. MNOG will not be referred to in references.

5.3 Management Notes of Guidance are not regarded as disciplinary sanctions and do not form part of the formal disciplinary process. There is no right of appeal against the issue of a MNOG.

## 6.0 Initial Fact Find

6.1 In some circumstances, where an allegation is brought to the attention of the Headteacher they or their nominated person may carry out an initial fact finding to establish the basic facts of the situation prior to proceeding to a formal investigation. The Regional HR Manager must be informed immediately of any cases which are considered to involve potential gross misconduct so that guidance / support can be provided.

6.2 It is important at this stage to sense-check which is the most appropriate Trust policy in the circumstances (e.g. Allegations of Abuse, Whistleblowing, Anti-Fraud & Bribery, Dignity at Work) seeking advice if necessary.

6.3 The aim of an initial fact finding is to establish whether, on the face of the evidence available, there is a case to investigate further. This may involve viewing CCTV footage (in accordance with our Trust Use of Closed Circuit Television Policy) , checking records, taking action to secure computer records and speaking to the colleague and any witnesses to obtain their version of events.

6.4 The initial fact finding should be carried out as soon as possible after the matter is brought to the attention of the Headteacher or manager (in the case of central/hub colleagues) and a decision should be made without undue delay as to whether the matter should be fully investigated under the formal process set out below. The Regional HR Manager must be informed of all cases proceeding to formal investigation.

## 7.0 Informing the colleague of the allegations

7.1 In cases where a decision has been taken to proceed to an investigation the colleague will be notified in writing of the allegations and that an investigation under the disciplinary procedure will occur and of the right to be accompanied. The notification should also inform the colleague of who has been appointed as Investigating Officer. The Investigating Officer may be supported in the overall investigation process by a member of the HR team and/or an Assistant Investigating Officer, but only the Investigating Officer will conduct the interview with the colleague against whom misconduct is alleged (with a note taker, who may be a member of the HR team), and only the Investigating Officer will be called as a witness to answer questions at any hearing that may take place. Different people will carry out the investigation and the disciplinary hearing.

7.2 Where disciplinary action is being considered against a colleague who is a trade union representative this disciplinary procedure should be applied and the Regional HR Manager must be informed. It is expected that the matter will be discussed at an early stage with an official employed by the union, after obtaining the employee's agreement (unless there are exceptional circumstances e.g. potential gross misconduct / safeguarding issues when the Regional HR Manager may speak to a Branch Officer without prior agreement).

## 8.0 Investigation

8.1 No disciplinary action will be taken against a colleague until an investigation to establish the full facts of the case has taken place. The purpose of the investigation is to establish the facts whilst they are still clear in the minds of those involved, and to decide if any further action may be necessary. The colleague may be accompanied by a Trade Union Representative at an investigation meeting taking place under the formal process. Witnesses may request a Trade Union Representative is present if they are asked to provide evidence for the investigation (this must not be the same TU Rep as the person supporting the individual against whom allegations have been raised).

8.2 The investigation should be carried out promptly and without unnecessary delay.

8.3 Where reasonable the investigation should be completed within 25 working days. However, if the investigation is not completed within this period then the colleague will be informed of this, providing the reasons for delay, and given regular information as to how the investigation is progressing.

8.4 It is the role of the Investigating Officer to determine whether or not there may be a potential case to answer (i.e. whether or not the matter should progress to a disciplinary hearing). The Investigating Officer may also state whether or not the matter could, based on the evidence collected, be considered as potential gross misconduct. It is not their role to suggest what the outcome of the hearing should be.

8.5 If at the end of the investigation, it is found that there is no case to answer, the colleague will be informed of this in writing and no reference to the investigation will be kept on the colleague's file with the exception of a "no further action" letter, or a "management note of guidance" if appropriate. Where appropriate, training may be recommended, or restorative actions may be taken e.g. mediation if the case arose from a complaint from a parent or work colleague.

8.6 In cases of allegations of abuse against staff members (including volunteers), other than those found to be false or malicious, it is important that a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved, and a note of any action taken, and decisions reached, is kept on the confidential personnel file of the accused, and copy should be provided to the person concerned in writing. For example, this could be in a "no further action letter" or in a "management note of guidance"

For all allegations (other than those found to be false or malicious), records of investigations and outcomes will be kept securely in accordance with the Data Protection Act 2018 which includes the rules set out in the General Data Protection Regulations. In line with Keeping Children Safe in Education 2020 (para 242) the records will be kept, including for people who leave the organisation at least until the person reaches normal retirement age or for 10 years if that is longer, from the date of the allegation.

Details of allegations following an investigation that are found to have been malicious or false should be removed from personnel records unless the individual gives their consent for retention of the information; the employee may subsequently change their decision and ask for details of the allegations to be removed.

## 9.0 Suspension

9.1 Suspension is a response available to temporarily remove a colleague from the workplace in order to investigate the circumstances relating to any alleged misconduct, but should be used with caution. *There is case law which states that*

*suspension is not necessarily a 'neutral act' and could be considered as detrimental.* Suspension should be a last resort, not automatic, and all other alternative options should be considered (and a note of these considerations kept using the suspension risk assessment template). If possible, a decision should not be made until advice has been taken from a Regional HR Manager or Regional Director.

9.2 Whilst a decision on suspension is being taken, a colleague may be asked to go home and not attend work, or be temporarily redeployed, usually for a maximum of 48 hours.

9.3 Section 13 sets out with whom the authority to suspend (and review / lift a suspension) rests, depending on who is involved. Suspension is on full contractual pay and should be for as short a period as possible. It must be confirmed in writing to the colleague, giving clear reasons for the suspension and its expected duration. The period of suspension should be kept under review, and should be lifted as soon as circumstances permit. The colleague should be kept informed of when they may return.

9.4 A colleague may be suspended where one or more of the following apply:

- an allegation of very serious misconduct is being investigated
- an allegation of misconduct is being investigated where there is a danger that the alleged misconduct may be committed again
- the investigation into an allegation of misconduct could be compromised by the continuing presence of the colleague at work
- there is a potential threat to the work of our Trust and its academies, or to pupils/students, to other colleagues, or to other stakeholders.

9.5 Before a suspension takes place it needs to be ensured that the following has taken place/been considered:

- where an allegation of very serious misconduct has been made suspension should not be automatic; an initial fact finding (usually no longer than two working days) should be carried out to determine whether there is enough evidence to show a potential case to answer. This should include talking to the colleague to establish their version of events. During this time the colleague may be asked not to attend work or be temporarily redeployed.
- Following the initial fact finding, if it is considered necessary to remove the colleague from their usual role for a longer period, the possibility of placing the colleague in another work area within the academy, or within a different part of our Trust, whilst the investigation is carried out should be considered as an alternative to suspension.

9.6 Suspension does not imply wrongdoing and does not prejudice the outcome of the disciplinary investigation or hearing. Suspension does not constitute a disciplinary sanction.

9.7 Suspended colleagues must make themselves available for interviews under the procedure and must not take alternative employment while the contract of employment still applies. They must make themselves available for other meetings which may be required in the course of their employment, and notify the school of the intention to take holidays – in the same way they would do if attending work.

9.8 If appropriate, colleagues may be asked to return property belonging to our Trust / academy (e.g. keys, IT equipment), and/or have access to online systems suspended, and/or be asked to refrain from visiting Trust premises unless this is unavoidable (e.g. they have children who attend the academy). They should be advised not to discuss the case with other colleagues whilst the investigation is undertaken, but social contact with colleagues and friends should not be prevented unless there is evidence to suggest that such contact is likely to be prejudicial to an investigation.

9.9 Suspension can potentially impact wellbeing & mental health, and effective support should be provided for the suspended colleague, for example sign-posting to the Colleague Support helpline, advising to contact their trade union representative if they have one, providing a named contact at the academy who can keep them up-to-date with general academy information and make contact regularly from a welfare perspective.

9.10 Where a colleague falls sick during a period of suspension, the normal certification requirements and reporting and contractual sick pay entitlements will apply.

9.11 If, on completion of the investigation, our Trust (see section 13) believes it to be appropriate, having regard to the above provisions, the period of suspension on contractual pay may continue until a disciplinary hearing has been held and a decision communicated to the colleague. Where a period of suspension is ongoing for a period of time it should be regularly reviewed; the colleague or their Trade Union Representative may also request a review.

9.12 When returning to work following a period of suspension, appropriate support should be given to help the colleague reintegrate back into their role.

## 10.0 The Disciplinary Hearing

10.1 Following the investigation, if it is considered by the Commissioning Manager that there is a potential case to answer then a disciplinary hearing will be convened. The hearing will decide what, if any, action should be taken in respect of the alleged misconduct. Further details on who should hear the disciplinary are given in section 13, and further details of the process for the hearing at Annex 2.

10.2 The colleague will be given 10 working days' notice in writing of a disciplinary hearing. The chair of the hearing will write to the colleague to confirm:

- the allegations against them
- the date, time and location of the hearing
- the name of the person (or panel) chairing the hearing
- the right to be accompanied and/or represented by a trade union representative or work colleague
- the requirement to provide the chair hearing the case with a copy of the documents that they will be relying upon and the names of any witnesses that they will be calling at the hearing at least 5 working days before the hearing

10.3 Copies of documents or evidence that the Commissioning Manager will refer to at the hearing, and names of any witness that they will call will be included with the notification. The notification should contain sufficient information about the alleged misconduct and its possible consequences to enable the colleague to prepare to answer a case at a disciplinary hearing.

10.4 The colleague will be informed if the outcome of the hearing could be a dismissal.

10.5 At the hearing, the 'Commissioning Manager' will attend to present the Trust's case to the panel, and may call witnesses. -The investigating officer may be called to answer questions. The colleague and their trade union representative will be given the opportunity to state their case, call witnesses and ask questions. HR will attend the hearing to provide procedural advice. An order of proceedings is given at Annex 2.

10.6 The hearing will normally be adjourned whilst the chair/panel hearing the case reaches a decision. The basis of the decision should be whether on the balance of probabilities the colleague committed the alleged misconduct based on the evidence presented from both sides, and if so what if any disciplinary sanction should be given. The disciplinary sanction will depend on the seriousness of the

misconduct, any current warnings and/or relevant mitigating circumstances (see section 10).

10.7 The colleague will be notified in writing of the outcome within 5 working days and of their right of appeal and to whom an appeal should be addressed. Where a colleague is dismissed they should be dismissed with appropriate notice, unless the allegations amount to gross misconduct.

10.8 A postponement may be granted if the colleague or their representative is unable to attend on the proposed date and will not be unreasonably refused. A postponement should not be for more than 5 working days after the original date proposed, however, an extension to this time limit can be made by mutual agreement. Where a hearing is rearranged and the colleague is unable to attend a second time the hearing will convene, as arranged, and a decision may be taken in the colleague's absence based on the evidence available.

## 11.0 Disciplinary Sanctions

11.1 It may be that the outcome of the hearing is that there is no case to answer, in which case the colleague should be given a letter to inform them that the matter is closed and no record of the hearing will be kept on the file.

11.2 Where the allegations of misconduct have been upheld, the disciplinary hearing may decide on one of the following sanctions:

- Note of Caution - misconduct is not sufficiently serious to warrant a higher level of disciplinary sanction or the circumstances of the case may be such that the panel accepts the mitigation provided and considers a lower level of disciplinary sanction is justified.
- First written warning – where misconduct has occurred
- Final written warning – where sufficiently serious misconduct has occurred or where there is continued repetition of an offence despite a previous warning.
- Dismissal – where a colleague has still not reached the level required, or where there are continued breaches of conduct despite previous warnings, or when gross misconduct has occurred. Dismissal may be with, or without, contractual notice pay.

11.3 A Note of Caution, First or Final written warning should set out the nature of the misconduct and the improvement that is required. The colleague should be told how long the warning will remain current. The colleague should be informed that failure to improve, or further misconduct within the specified timescale could lead to more serious formal action being taken, including dismissal.

11.4 Warnings will be disregarded for disciplinary purposes after 6 months for a Note of Caution, 9 months for a first written warning and 12 months for a final written warning, unless otherwise stated. If during this period similar offences or further misconduct occurs, then any 'live' warnings will be taken into account. Once spent, the disciplinary warning will remain on the file as part of the colleague's overall record of employment but would not be taken into account and would not be referred to in a reference.

11.5 A decision to dismiss should only be taken by persons who have the authority to do so (see section 13)

11.6 The colleague should be informed of the reasons for the dismissal, the appropriate period of notice, the date on which the employment contract will end, and the right of appeal. Unless a colleague is being summarily dismissed with no notice, they should receive the appropriate period of notice or pay in lieu of notice.

## 12.0 Appeals

12.1. A colleague is entitled to appeal against the formal decision taken by the disciplinary hearing.

12.2 The appeal should be on the basis of one of the following grounds:

- the procedure - a failure to follow procedure had a material effect on the decision
- the decision - the evidence did not support the conclusion reached
- the penalty - was too severe given the circumstances of the case
- new evidence - which has genuinely come to light since the first hearing
- discrimination (contrary to the Equality Act 2010).
- other factors which have led the colleague to believe the disciplinary action taken is wrong or unjust

12.3 The appeal must be made in writing, addressed to the person named in the outcome letter, stating the specific grounds for the appeal, within 5 working days of being advised in writing of the decision of the hearing.

12.4 The appeal will be heard as soon as possible and not normally later than 30 working days after being received.

12.5 Appeal hearings will not normally be a rerun of the first hearing. Instead the Appeal Panel will consider the following as appropriate to the case:

- the properness of the procedure leading up to the original hearing
- the composition of the original panel
- the conduct of the original hearing
- any new evidence provided
- appropriateness of the initial disciplinary sanction

12.6 The colleague will be given 10 working days' notice, in writing, of the date of the appeal hearing. This notification will give the name of the person chairing the hearing, and the names of panel members. Further details on the composition of the appeal panel is given in section 13. It will remind the colleague of their right to be accompanied at the hearing by either a trade union representative or work colleague. HR will attend the hearing to provide procedural advice.

12.7 Both parties must indicate at least 5 working days in advance of the appeal hearing which, if any, witnesses they wish to call and provide copies of any documentation that will be relied upon at the hearing. In exceptional circumstances an alternative time-scale may be agreed.

12.8 The Chair of the disciplinary hearing will attend the appeal.

12.9 Details of the process for the appeal hearing is given at Annex 3. The colleague will be able to present evidence that is directly relevant to the grounds of the appeal. The Chair of the disciplinary hearing will have the opportunity to respond. The appeal hearing may be adjourned if necessary.

12.10 The appeal hearing may confirm or overturn the decision and may recommend some alternative action.

12.11 The colleague will be informed of the appeal decision in writing, within 5 working days of the hearing being concluded. The decision of the appeal hearing is final.

12.12 In cases where an appeal against a dismissal is upheld and a decision is made to reinstate/re-engage, the colleague shall suffer no loss under their previous contract of employment from the date of the dismissal up to the date of re-employment.

12.13 In exceptional circumstances, and only at our Trust’s discretion depending upon the nature of the appeal, where an appeal is run as a rehearing, please see Annex 4 for order of proceedings.

### 13.0 Authority to act under the procedure

These levels of authority are in line with our Trust’s Scheme of Delegation.

It is expected that those acting at each level of the procedure will not have previously been involved with the investigation or previous hearings.

	Suspend the colleague, and end the suspension	Investigate the allegations	Hear the disciplinary	Hear the appeal
All academy based colleagues except Heads of School, Headteachers & Executive Headteachers	Headteacher  <i>Regional Director will decide whether our Trust CEO should be informed</i>	Person nominated by Headteacher or Regional Director	Where dismissal is <u>not</u> a possible outcome: Headteacher, or panel of three from the Resolutions Team  Where dismissal <u>is</u> a possible outcome: panel of three from the Resolutions Team	Panel of three from the Resolutions Team
Headteacher	Regional Director or Trust CEO	Appointed by Trust CEO	Where dismissal is <u>not</u> a possible outcome: Regional Director, or panel of three from the Resolutions Team  Where dismissal <u>is</u> a possible outcome: panel	Appeal against action short of dismissal: panel of three from the Resolutions Team  Appeal against dismissal: panel of three from our Trust Board

			of three from the Resolutions Team	
All central team colleagues except our Trust CEO	Trust CEO (or nominated delegate)	Independent person appointed by our Trust CEO	Where dismissal is <u>not</u> a possible outcome: Trust CEO (or member of Trust SLT nominated by the Trust CEO)  Where dismissal <u>is</u> a possible outcome: panel of three from the Resolutions Team	Panel of three from Trust Board
Trust CEO	Chair of our Trust Board (or nominated delegate)	Independent person appointed by the Chair of our Trust Board	Where dismissal is <u>not</u> a possible outcome: member of our Trust Board appointed by Chair  Where dismissal <u>is</u> a possible outcome: panel of three from our Trust Board	Panel of three from our Trust Board

## 14.0 Records

14.1 Records of disciplinary hearings and disciplinary appeal hearings will be kept detailing:

- the nature of any allegations
- the colleague's defence or mitigation
- the action taken and the reasons for it
- whether an appeal was lodged and its outcome
- any subsequent developments.

14.2 These records will be kept confidential and retained in accordance with the Data Protection Act 2018, which includes the rules set out in the General Data Protection Regulations.

14.3 Records will be disregarded for disciplinary purposes after a set period of time depending on the level of penalty given (see 11.5), and will be retained for six years after employment ceases, after which time they must be destroyed as confidential waste.

## 15.0 Criminal Convictions

15.1 Colleagues are required to inform the Headteacher or Manager in the event of being cautioned, or arrested on suspicion of a criminal offence, whether the offence is committed during the course of employment or outside employment. Failure to comply with this requirement may lead to them being subject to action under this Procedure.

15.2 Advice should be sought from Human Resources, and action taken in light of the particular circumstances of a case, and with reference to the ACAS guide on Discipline and grievances at work.

## 16.0 Review

16.1 This procedure will be reviewed to respond to any changes in the employment legislation, and at least every three years in consultation with our recognised Trade Unions. The outcomes of the policy will be reviewed in line with equalities legislation.

## Annex 1 - Examples of misconduct and gross misconduct

The bullet points under the headings below are intended as a guide, but decisions on misconduct v gross misconduct are very much down to the circumstances of the case as identified through the investigation i.e. something listed under misconduct could be considered to be gross misconduct, and vice versa.

### Misconduct

This is a breach of discipline which on its own is not sufficiently serious to warrant dismissal, but will warrant action being taken under this procedure. In cases where misconduct takes place and live warnings for this or another type of misconduct are still in force, then unless mitigating circumstances are proven, the colleague may (following an investigation and further hearing under this Procedure) be dismissed with notice.

Examples of misconduct are listed below. This list is not intended to be exclusive or exhaustive and there may be other incidents of misconduct of a similar gravity:

- Poor timekeeping including unauthorised absence
- Failure to observe reasonable instructions
- Failure in duty of care towards pupils/students or colleagues
- Failure in protecting the health, safety and wellbeing of pupils/students and colleagues
- Minor instances of neglect of duties and responsibilities
- Deliberate breaches of our Trust's or academy's policies and procedures
- Misuse of our Trust's facilities (e.g. telephone and the internet)
- Failure to adhere to the requirements of our Trust's Colleague Code of Conduct, or other relevant documented expectations / standards (e.g. Teachers' Standards)
- Covert recording of meetings

### Gross Misconduct

This is a grave breach of discipline which may be serious enough to destroy the employment contract between our Trust and the colleague making any further working relationship and trust impossible.

Gross misconduct could lead to dismissal without notice, or a final written warning, depending on the circumstances of the case, even for first incidents of gross misconduct. The list is not intended to be exhaustive and there may be other incidents of gross misconduct of a similar gravity which could result in dismissal.

- Theft, fraud or deliberate falsification of records

- Serious breaches of our Trust's Colleague Code of Conduct & other Professional Codes of Conduct
- Refusal to register with mandatory professional bodies (including persistent failure)
- Failure in duty of care to protect pupils / students by placing them at significant risk
- Physical violence or bullying
- Unlawful discrimination or harassment
- Serious and deliberate damage to property
- Serious insubordination
- Serious incapability during working hours brought on by alcohol or illegal drugs
- Serious abuse of our Trust's Online Safety, Social Media, or Acceptable Use Policies (e.g. in relation to accessing pornographic internet sites or sending and receiving offensive or obscene material)
- Serious misuse of school's facilities, property or name
- Bringing our Trust or its academies in to disrepute
- Causing loss damage or injury through serious negligence
- Serious breaches of health and safety rules
- Serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998)
- Sexual misconduct

## Annex 2 - Order of proceedings for Disciplinary Hearing

### 1. Introduction

- Introduce those present, and explain why they are there. A notetaker will attend to take notes on the proceedings, and Human Resources may be present throughout the hearing.
- Explain the purpose of the meeting i.e. to establish as fully as possible the facts of the case, and to consider whether disciplinary action should be taken in accordance with our Trust's disciplinary procedure.
- Explain how the meeting will be conducted

### 2. Statement of the case

- The 'Commissioning Manager' will attend the hearing to present our Trust's case. They may refer to the written investigation report.
- The 'statement of the case' will include precisely what the allegations are, and an outline of the case by going through the evidence that has been gathered.
- Witnesses, including the Investigating Officer, may be called in person to answer questions.
- Ensure that the colleague and their companion have (a) seen any statements made by witnesses and (b) had the opportunity to raise questions.

### 3. Colleague's reply

- Give the colleague the opportunity to state their case and answer any allegations that have been made. They should be able to ask questions, present evidence and call witnesses. The colleague and their companion should be given the opportunity to confer privately.
- Ensure that Trust representatives have (a) seen any witness statements put forward and (b) had the opportunity to raise questions of the colleague or witnesses.

### 4. General questioning and discussion

- The person/panel hearing the disciplinary should:
  - Ask questions of the Commissioning Manager, any witnesses (including the Investigating Officer, if called), and the colleague, to fully establish all the facts [this may be done in section 2 and 3 above and/or at this point of proceedings]

- Ask the colleague if they have any explanation for the alleged misconduct, or if there are any special circumstances to be taken into account
- Keep the approach formal and polite, and encourage the colleague to speak freely; it should be a two-way process.
- Use questions to clarify the issues and check that what has been said is understood.
- If new facts emerge, it may be necessary to adjourn the hearing to investigate.

#### 5. Summing up

- Chair asks the Commissioning Manager presenting the case to sum up
- Chair asks the colleague to sum up

#### 6. Adjournment before decision

- Before adjourning, the Chair may wish to check with the colleague if they have any concerns about the way in which the hearing has been conducted.
- The Chair should then adjourn the meeting before a decision is taken about whether a disciplinary penalty is appropriate. This allows the panel time for reflection and proper consideration; as much time should be taken as is necessary.

#### 7. Communicating the decision

- Unless a mutual agreement has been reached otherwise, the meeting will be reconvened. The Chair will give a summary and concluding remarks
- The colleague will be informed of the outcome of the hearing and any right of appeal.
- The decision will be communicated in writing within 5 working days.

## Annex 3 - Order of proceedings for Disciplinary Appeal Hearing

*This should be read in conjunction with section 12 of the Disciplinary Procedure. This document is intended as a guide. In certain circumstances all parties may agree to a slightly different order at the start of the Hearing e.g. for the reasons for the original hearing's decision making to be set out first.*

1. Introduction
  - Introduce those present, and explain why they are there. A notetaker will attend to take notes on the proceedings and Human Resources may be present throughout the hearing
  - Explain the purpose of the meeting i.e. in line with our Trust's Disciplinary Procedure, to understand as fully as possible the facts of the appeal, and to consider whether the decision of the disciplinary hearing should be upheld or not
  - Explain how the meeting will be conducted
2. Statement of the appeal
  - Colleague / their representative state precisely what the grounds for appeal are, and present the evidence in support of this
3. Decision maker's reply
  - The Chair of the original disciplinary hearing will be given the opportunity to respond
  - The colleague / their representative has the opportunity to ask questions
4. General questioning and discussion
  - The panel hearing the appeal should:
    - Use this stage to establish all the facts
    - Ask questions to clarify the issues and check that what has been said is understood
    - Keep the approach formal and polite, and encourage the participants to speak freely; it should be a two-way process
  - If new facts emerge, it may be necessary to adjourn the hearing to investigate
5. Summing up
  - Chair asks the original decision maker to sum up
  - Chair asks the colleague to sum up
6. Adjournment before decision
  - Adjourn so the panel can reflect and consider their decision

- The appeal panel may confirm or overturn the decision of the original disciplinary hearing, or may recommend some alternative action - but cannot impose a more severe sanction
7. Communicating the decision
- Unless a mutual agreement has been reached otherwise, the meeting will be reconvened and the colleague be informed of the outcome of the appeal hearing
  - The decision will be communicated in writing within 5 working days; the decision of the appeal hearing is final

## Annex 4 - Order of proceedings for an Appeal Hearing where a rehearing is necessary

*This should be read in conjunction with section 12 of the Disciplinary Procedure. This document is intended as a guide. In certain circumstances all parties may agree to a slightly different order at the start of the Hearing e.g. for the reasons for the appeal to be set out first. The hearing may be less rigid especially in terms of questioning, with the panel having the opportunity to question throughout as they believe appropriate.*

### 1. Introduction

- Introduce those present, and explain why they are there. A notetaker will attend to take notes on the proceedings and Human Resources may be present throughout the hearing
- Explain the purpose of the meeting i.e. a rehearing in line with our Trust's Disciplinary Procedure, to understand as fully as possible the facts of the appeal, and to consider whether the decision of the disciplinary hearing should be upheld or not
- Explain how the meeting will be conducted

### 2. Statement of the case

- The 'Commissioning Manager' will attend the hearing to present our Trust's case. They may refer to the written investigation report.
- The 'statement of the case' will include precisely what the allegations are, and an outline of the case by going through the evidence that has been gathered.
- The Commissioning Manager may call witnesses, including the Investigating Officer, to attend in person to answer questions.
- The colleague and their companion should have seen any written statements shared with the panel of the rehearing.
- The Chair of the original disciplinary hearing explains the reason for their decision (this person will normally attend as a witness only for this part of the hearing).
- The colleague and their companion have the opportunity to ask questions.
- The panel (and HR support if appropriate) have the opportunity to ask questions.

### 3. Colleague's reply

- The colleague (and their companion) has the opportunity to state their case and answer any allegations that have been made.
- The colleague (and their companion) may ask questions, present evidence and call witnesses.

- The colleague and their companion should be given the opportunity to confer privately throughout the process.
- The Commissioning Manager and panel members have the opportunity to ask questions.

#### 4. Overview

- The person (panel) chairing/conducting the hearing should:
  - Ask questions of the Commissioning Manager, any witnesses (including the Investigating Officer, if called) and the colleague to fully establish all the facts
  - Ask the colleague if they have any explanation for the alleged misconduct, or if there are any special circumstances to be taken into account
  - Keep the approach formal and polite, and encourage the colleague to speak freely; it should be a two-way process.
  - Use questions to clarify the issues and check that what has been said is understood.
  - Try to ensure that questions are questions and not statements.
- If new facts emerge, it may be necessary to adjourn the hearing to investigate.

#### 5. Summing up

- Chair asks the Commissioning Manager presenting the case to sum up
- Chair asks the colleague to sum up
- This provides an opportunity to remind all parties of the nature of the allegation, the arguments and evidence put forward, and to ensure nothing is missed. The colleague usually has the final word.

#### 6. Adjournment before decision

- Adjourn so the panel can reflect and consider their decision
- The appeal panel may confirm or overturn the decision of the original disciplinary hearing, or may recommend some alternative action - but cannot impose a more severe sanction

#### 7. Communicating the decision

- Unless a mutual agreement has been reached otherwise, the meeting will be reconvened and the colleague be informed of the outcome of the appeal hearing
- The decision will be communicated in writing, normally within 5 working days.
- There is no further right of appeal