



TRUST IN LEARNING (ACADEMIES)

DISCIPLINARY POLICY AND PROCEDURES



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Date	Page	Change	Purpose of Change

Disciplinary Policy

1. Principles

1.1 The Disciplinary Procedure supports Trust in Learning (Academies) (TiLA) and Local Governing Body's standards and rules (including the Code of Conduct) and aims to ensure consistent and fair treatment for all. It is not there to deal with problems associated with unsatisfactory work performance arising from an employee's lack of capability.

1.2 The procedure applies to all employees except:

- staff in their probationary period and
- newly qualified teachers,

Disciplinary issues relating to such employees must be handled in a fair and equitable manner.

1.3 The Chief Executive or Headteacher (or governors when appropriate) are responsible for operating this procedure and are able to issue disciplinary warnings. In any case where an outcome may be dismissal the dismissing officer will be one or more Governors and the Chief Executive or Headteacher.

1.4 The Local Governing Body is responsible for specifying the standards of behaviour required, enforcing the rules and ensuring that breaches are tackled promptly. They should give the implementation of the disciplinary procedure a high priority when they need to use it.

1.5 Standards in the areas of acceptable conduct, attendance and behaviour are detailed in:

The Disciplinary Procedure - will be followed to ensure a fair method of dealing with any failures to observe general standards of behaviour and conduct by a member of staff. Examples of Gross Misconduct are detailed in Appendix 1

The Managing Staff Attendance Policy - which details the procedure to be followed for absence, whether persistent short term absence, or periods of long-term absence. This Policy has been designed to encourage and facilitate good levels of attendance.

The Appraisal Policy and Procedures - ensures all staff are aware of the standards of performance required in their job. If an employee's performance falls below an acceptable level which could be due to a number of reasons then the **Capability Policy and Procedure** will apply.

- 1.6 When this procedure applies to the Chief Executive/Headteacher a nominated governor will be required to investigate any allegations. Where there is a case to answer a committee comprising members of Local Governing Body shall be convened to consider the allegations and take any appropriate disciplinary action.
- 1.7 Any case of potential misconduct should be treated on its merits.
- 1.8 Employees who abuse this, or any other procedure, by making malicious or frivolous allegations may face disciplinary action.
- 1.9 All parties involved in a disciplinary matter should treat the information which is the subject of the disciplinary investigation in strict confidence. Information should not be shared with anyone who is not directly involved in these procedures. However those involved can discuss these matters with their representatives or advisers i.e. trade union officers, HR Advisers etc.
- 1.10 The procedure will be fair, impartial, reasonable, applied consistently and without discrimination

2. Procedure

- 2.1 An employee who is subject to this procedure has the right to be:
 - accompanied by a trade union representative or work colleague at the investigation stage;
 - represented by a trade union representative or work colleague at a disciplinary / appeal hearing

The employee is responsible for arranging to be accompanied or represented.

- 2.2 An employee can be offered transfer to alternative employment within the School or Academy (including relegation to a post with less responsibility on a lower grade) as an alternative to dismissal, either as a result of a disciplinary hearing or on appeal, if this is considered appropriate.
- 2.3 If the employee concerned is a trade union steward or officer, the Chief Executive or Headteacher should inform the full-time trade union officer prior to commencement of this procedure.
- 2.4 No employee will be dismissed for their first breach of discipline, unless it is a case of gross misconduct.

3. Suspension

- 3.1 The Chief Executive or Headteacher or a nominated governor should only suspend an employee if there is enough evidence to suggest that s/he may be guilty of gross misconduct or if the

employee's presence at work could hinder the investigation. It must be made clear that suspension is not a disciplinary penalty and that it will not prejudice any future disciplinary hearing. The employee must be given the name of a person to contact while s/he is suspended.

- 3.2 During the suspension, an employee will be paid the same as if s/ he were on authorised absence.
- 3.3 Gross misconduct is generally defined as misconduct serious enough to destroy the employment contract between the employer and the employee and to make any further working relationship and trust impossible. (See appendix to this procedure).
- 3.4 During the suspension, an employee will be paid the same as if s/ he were on authorised absence.
- 3.5 At frequent intervals, the Chief Executive or Headteacher and / or nominated governor should review whether an employee should stay suspended. Any suspension which extends beyond four working weeks must be reported to the Chair of Governors with details of how the investigation is progressing and when it is likely to end. Where any suspension continues for three months, the employee must be notified of the reasons for the suspension continuing and when it is likely to come to an end.

4. Investigation

- 4.1 Disciplinary action must not be taken before there has been an investigation into the circumstances.
- 4.2 If the initial information received, or the complaint against an employee does not suggest potential gross misconduct, the Chief Executive or Headteacher will arrange for the allegations to be investigated and take any disciplinary action which follows at any subsequent disciplinary hearing.
- 4.3 If the evidence against an employee suggests that he or she is guilty of gross misconduct the Chief Executive or Headteacher should investigate the allegations. Only those with delegated responsibility for dismissal will consider any allegations at a Disciplinary Hearing.
- 4.4 An employee must receive at least five working days' notice, in writing, of the requirement for him/her to attend any investigative meeting. The letter should also give him/her information about the allegations and his/her right to be accompanied by a trade union representative or work colleague.
- 4.5 Any investigation should be completed within four working weeks (unless there are exceptional circumstances).

5. Cases involving child protection issues, vulnerable adults or financial irregularities

- 5.1 A complaint involving allegations relating to child protection issues must be referred to the Local Authority Designated Officer (LADO) and then his/her advice must be considered before any investigation takes place under this procedure. The purpose of an initial discussion is for the LADO and the Chief Executive or Headteacher, to consider the nature, content and context of the allegation and agree a course of action.

- 5.2 Any complaint involving vulnerable adults must be referred to the designated officer in the Health and Adult Social Care Directorate before any investigation takes place under this procedure.
- 5.3 The Academy's Director of Finance and Operations must be notified of any allegations or indications of any financial irregularities immediately. The results of the investigations will form part of the conclusion and recommendation of the Investigatory report.

6. Disciplinary Hearing

- 6.1 If the Chief Executive or Headteacher/investigating officer concludes, following an investigation, that there is a case to answer at a disciplinary hearing, the employee will be notified in writing that a hearing will take place. Where possible the timing and location of the interview will be agreed with the member of staff and sufficient time up at least five working days will be given between the receipt of the written notification and the meeting to allow the member of staff time to prepare.

The following information should also be included in the letter:

- a copy of the disciplinary procedure;
 - the date and time of the hearing;
 - details of the allegations;
 - the fact that the employee will have the opportunity to state his/her case and question any witnesses;
 - the right to invite a trade union representative or work colleague to represent them;
 - any previous warnings that could be taken into account when deciding the level of any disciplinary action;
 - the fact that, depending on its findings, the hearing could result in disciplinary action and (adding where appropriate) that this could include dismissal.
- 6.2 Copies of any relevant papers and witness statements will be made available to the member of staff five working days in advance.
 - 6.3 Any companion or representative of the member of staff will be allowed to address the hearing to put and sum up the member of staff's case, respond on behalf of the member of staff to any views expressed at the disciplinary meeting and confer with the member of staff. The companion does not, however, have the right to answer questions on the member of staff's behalf, address the hearing if the member of staff does not wish it or prevent the investigating manager from explaining their case.
 - 6.4 At the Hearing the relevant manager who may have carried out the investigation will explain the complaint to the staff member and outline the case by briefly going through the evidence that has been gathered. The member of staff will be able to set out their case and answer any allegations that have been made. They will be able to ask questions, present evidence, call relevant witnesses

and question any witnesses used by the school. Where relevant witnesses are called by the member of staff, advance notice should be given to the Head teacher. The school has the right to state and will determine who would be considered relevant. Witnesses can only be called with the consent of the School. If a witness is not considered relevant (e.g. pupil or parent witness) then they cannot be called but witness statements can be produced.

- 6.5 If a staff member is unable to attend the set interview then providing the reason for non-attendance is a valid one they will be invited to another interview, however, where there is no valid reason for non-attendance then the school reserves the right to inform the staff member that decisions will be made in their absence should they fail to attend a re-arranged hearing without good reason.
- 6.6 At a disciplinary hearing which may result in dismissal, TiLA's Human Resource Advisor must be present to advise the Local Governing Body Disciplinary Panel.
- 6.7 Disciplinary action can be taken at any level from a recorded warning to dismissal, depending on the nature of the misconduct.

7. Result of Hearing – Disciplinary Action

- 7.1 If, following an investigation and disciplinary hearing, the Chief Executive/Headteacher/governors concludes that disciplinary action is required, the following options are available:

Level 1: Recorded warning

- 7.2 If the conduct concerned is unacceptable but not serious in nature, a recorded warning will normally be appropriate. (See paragraph 7.5 about written confirmation.)

Level 2: Written warning

- 7.3 If the offence is too serious for a recorded warning, or if there is further misconduct while a recorded warning remains in force, the Chief Executive/Headteacher/governors may determine to give the employee a written warning. (See paragraph 7.5 about written confirmation).

Level 3: Final written warning

- 7.4 If the misconduct is too serious for a written warning but not serious enough to warrant dismissal, or if there is further misconduct while a previous written warning remains in force, the Chief Executive/Headteacher/governors may determine to give the employee a final written warning. (See paragraph 7.5 about written confirmation).

Written confirmation of warnings

- 7.5 The Chief Executive/Headteacher/governors must give the employee written confirmation of any warning, within five working days together with an explanation of:

- the reason for the warning;
- whether it is a recorded, written or final warning;
- the employee's right of appeal (see paragraph 9);
- the fact that a note will be kept on their personal file indicating that a warning has been given, the reasons for it and any required improvements in conduct which have been specified;
- the fact that further misconduct may lead to further disciplinary action which could, where appropriate, include dismissal;
- the fact that the warning will be disregarded for further disciplinary purposes after the expiry of the time period.

Level 4: Dismissal, and dismissal with offer of re-engagement

7.6 If, following an investigation and disciplinary hearing, the Disciplining Officer/ Panel is satisfied that an employee is guilty of gross misconduct, the determination can be made to dismiss the employee. The Chief Executive/Headteacher/Chair of the Disciplinary Panel will confirm the determination to dismiss in writing, within five working days explaining the reasons for the dismissal and the employee's right of appeal. (See paragraph 9 and the appendix to this procedure concerning gross misconduct).

OR

7.7 If, while a final written warning is still in force, the employee's conduct is still unsatisfactory, as determined by a subsequent investigation and disciplinary hearing, /the Chief Executive/Headteacher/disciplinary panel will determine to dismiss with contractual notice. The Chief Executive/Headteacher/Chair of the Disciplinary Panel will confirm the dismissal recommendation in writing within five working days, explaining the reasons for the dismissal and the employee's right of appeal (see paragraph 9). The employee will receive full pay during the notice period.

OR

7.8 If appropriate, the Disciplinary Panel may dismiss an employee on either of the above grounds and offer to re-employ them in a different job in the school. The alternative post should be identified when the employee is told the outcome of the disciplinary hearing and this may require the proceedings to be adjourned. The alternative post may mean relegation to a lower grade. No pay protection will apply. A final written warning will form part of such a disciplinary decision. If the employee refuses the offer of transfer / relegation, his/her dismissal will take place.

8. Time Limits for Warnings

8.1 Unless there are exceptional circumstances, disciplinary warnings will be disregarded for disciplinary purposes once the following periods of time have elapsed since the warning was given:

- recorded warnings - six months

- written warnings - one year
- final written warnings - normally one year, such other time as is considered
- appropriate - see paragraph 8.2 below

8.2 Depending upon the nature of the misconduct, the Chief Executive/Headteacher or Local Governing Body Disciplinary Panel may impose a final written warning that will remain in force for a period of greater than one year. In this event the employee must be told at the outset and in writing how long the warning will remain in force and the reason for the longer time period.

In exceptional circumstances (e.g. abuse against children and vulnerable adults), the written warning may be extended for as long as the employee concerned is employed in his/her current job or a similar job. If an employee considers that the extended time period is unreasonable, he or she may appeal to the Clerk to the Governors who will convene an Appeal Hearing.

8.3 Where disciplinary action relates to abuse against children, vulnerable adults, breaches of financial regulations or issues which relate to racial, sexual or disability discrimination, the relevant documentation should be retained on the employee's personal file until the employee reaches 65 years or 10 years whichever is the longer, but will not form part of any subsequent disciplinary action if it is time-expired.

8.4 In all other disciplinary actions the relevant documentation will be removed from the file and will be destroyed, with the exception of the letter to the employee which confirms the outcome of the disciplinary hearing. This letter will not, however, form part of any subsequent disciplinary action if it is time-expired.

9. Appeals

9.1 An employee who wants to appeal against a disciplinary decision should inform the Clerk to the Governors within five working days of receiving the decision in writing. The employee must explain the grounds for the appeal, specifying whether it relates to:

- the facts of the matter,
- the level of sanction imposed or
- the way the procedure was followed.

9.2 The purpose of an appeal is:

- to review the decision taken by the disciplining manager/Local Governing Body Disciplinary Panel;
- to consider whether the procedure has been followed correctly.

9.3 An appeal is a review of the decision of the Chief Executive/Headteacher/disciplinary panel. It is not a re-hearing. The outcomes open to the Appeal Panel are to:

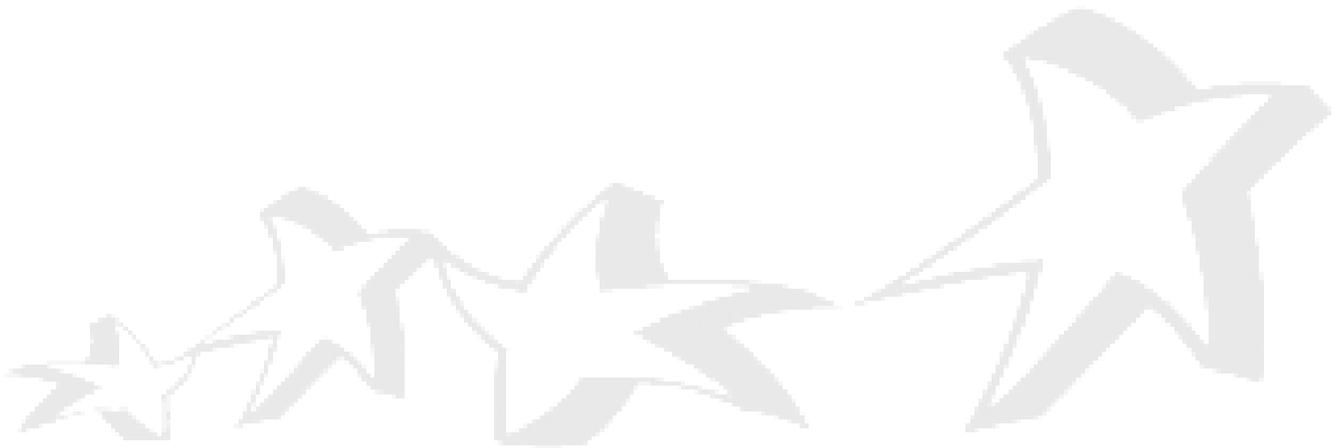
- uphold the appeal;

- reject the appeal in full;
- reject the appeal in part and impose a lower level of warning;
- (exceptionally) reject the appeal and impose a higher level of warning up to and including a final warning

9.4. The Chief Executive/Headteacher/Chair of Governors' Disciplinary Panel will present the case at any appeal against a disciplinary decision.

9.5 An appeal against any warning or dismissal will be heard by a Panel of three Governors who have not previously been involved in the case. The appeal will normally take place within six working weeks of the appeal request being received by the Clerk to the Governors.

9.6 At an Appeal Hearing against dismissal, the HR Advisor for the TiLA will be present to advise the Local Governing Body representatives who are hearing the appeal.



Appendix 1 - Examples of Gross Misconduct

Some of the offences which may be regarded as gross misconduct are:

- theft or unauthorised use or removal of the council's, a service user's, a client's or a fellow employee's property
- falsification of time-sheets, expenses claims or other records
- fighting or physical assault
- harassment or discrimination on the grounds of race, gender, sexuality or disability
- deliberate damage to council or a fellow employee's property
- inability to carry out normal work through being under the influence of alcohol or other drugs (medically prescribed drugs may be an exception)
- deliberate disregard for safety rules
- serious negligence causing unacceptable loss, damage or injury
- a serious breach of the School's Code of Conduct
- misuse of an employee's official position for personal gain, or for the inappropriate benefit of a friend, colleague or member of the employee's family
- failure to comply with a reasonable management instruction, despite being warned of the consequences
- abuse of a service user