



THE BAY
LEARNING TRUST

Disciplinary Policy (Staff)

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THE BAY LEARNING TRUST
DISCIPLINARY POLICY

1 SCOPE AND PURPOSE

1.1 The purpose of the procedure is to give a structure to improve conduct to the standards expected and to facilitate the fair dismissal of those who have not improved or whose conduct is so unacceptable as to warrant dismissal without notice.

1.2 This policy must be read in conjunction with the **Code of Conduct**, which sets out the standards to be expected of each employee.

1.3 The Trust delegate their authority in the manner set out in this procedure.

1.4 There may be some occasions where an employee's behaviour could also be described as incapability. This Disciplinary Policy and the Trust's Capability Policy may be used concurrently whilst the Academy ascertains if the behaviour is misconduct or incapability.

1.5 There may be occasions where an employee's conduct could relate to their health. This Disciplinary Policy may be used concurrently with the Trust's Staff Attendance Management Policy. In particular, if an employee is then absent from work following the use of this Disciplinary Policy, the Trust will apply the provisions of its Staff Attendance Management Policy to manage the absence.

1.6 There may be occasions when an employee attempts to use the Trust's Grievance Policy in connection with actions taken under this Disciplinary Policy. This shall not lead to any delay or pause in the conduct of any matters being considered under the Disciplinary Policy.

1.7 There may be occasions where this procedure needs to be modified, for example to comply with any requirements in relation to pupil safeguarding. The recognised trade unions will be consulted on any such proposed changes.

1.8 This policy does not form part of any employee's contract of employment and it may be amended at any time. Any proposed changes will normally be the subject of consultation with the recognised trade unions.

1.9 In this policy, references to personnel/bodies are to the personnel/bodies present within the Academy at which the particular member of staff reading or exercising the policy is engaged.

2. WHO IS COVERED BY THIS POLICY?

2.1 This policy covers all employees at all levels and grades, including senior managers, officers, employees, trainees, part-time and fixed-term employees (collectively referred to as **employees** in this policy). It does not apply to agency staff and self-employed contractors.

3. WHO IS RESPONSIBLE FOR THE POLICY?

3.1 The Trust has overall responsibility for the effective operation of this policy and for ensuring compliance with the relevant statutory framework. The Trust has delegated day-to-day responsibility for operating the policy to the Chief Executive and to the Principal of each Academy.

3.2 The Senior Leadership Team of each Academy has a specific responsibility to ensure the fair application of this policy and all members of staff are responsible for supporting colleagues and ensuring its success.

4. DEFINITIONS

4.1 In this policy, working day means any day on which an employee would ordinarily work if they were a full time employee. In other words it will be different for teaching and non-teaching staff but will not be different on the basis of whether an employee is full-time or part-time.

5. INFORMAL ACTION

5.1 Where appropriate, the Trust will try and deal with matters on an informal basis. It is often the case that minor issues of conduct can be resolved informally between an employee and their manager and in many cases this will be the appropriate way to address any concerns.

5.2 An employee's line manager may give him/her management instructions or informal warnings at any time about the possible consequences of any further misconduct where it falls short of the standard expected.

5.3 Instructions, guidance and informal warnings may be recorded in writing and referred to at a later stage to evidence that an informal approach was attempted and the success or failure of such an approach.

5.4 Failure to comply with informal action should not on its own be used as justification for issuing a higher form of sanction than would otherwise have been imposed under the formal process.

5.5 It is also possible for the parties to agree an outcome to a formal process and sanction prior to a formal disciplinary meeting being held. Any such agreement will be recorded in writing.

6. INVESTIGATING, DISCIPLINARY AND APPEAL MANAGERS

6.1 The personnel responsible for each stage of this policy depends on the role the relevant employee performs.

6.2 The following table describes the normal course of action although this may be subject to change depending on the circumstances of the individual case.

Employee Level	Investigating Manager	Disciplinary Manager	Appeal Manager
Principal	Chief Executive Officer	Trust Disciplinary Panel	Director Appeal Panel

Other Leadership Employees and Academy Business Managers'	Principal	Chief Executive or a non-staff Director nominated by the Chief Executive	Director Appeal Panel
Other Teaching Staff	Member of Leadership Team other than Principal	Principal	Chief Executive
Other Support Staff	Member of Leadership Team other than Principal	Principal	Chief Executive

7. SUSPENSION

7.1 In cases where it is justified, after a preliminary investigation, the Principal or the Chief Executive Officer may suspend an employee for a reasonable period of time. This is a neutral act.

7.2 The Principal must inform the Chair of the Local Governing Body and the Chief Executive Officer of the suspension or in the event of suspension by the Chief Executive Officer they must inform the Trust Board, excluding any staff governors or Directors as appropriate.

7.3 This period of suspension must be reviewed by the Chair of the Local Governing Body or the Chief Executive Officer, as appropriate, at intermittent intervals and must be no longer than is required, depending on the circumstances.

7.4 Suspension should ideally be undertaken in person but may be undertaken in writing. If it is undertaken in person it will be confirmed in writing. Where practicable, the employee will be entitled to be accompanied by their Trade Union representative but their non-availability will not delay a suspension meeting.

7.5 Suspension may be justified in cases where:

7.5.1 Relationships have broken down.

7.5.2 Gross misconduct is alleged.

7.5.3 There are reasonable concerns that evidence or witnesses could be interfered with.

7.5.4 There are responsibilities to other parties.

7.5.5 To protect pupils or property.

7.6 Suspension is not an assumption of guilt and is not considered a disciplinary sanction. It does not imply that any decision has already been made about the allegations. An employee will receive full pay and benefits during a period of suspension (unless he/she is otherwise absent from work due to sickness or other leave and have exhausted the full pay entitlements connected to his/her absence). The employee will also receive details of a named contact during any period of suspension.

8.7 During a period of suspension the Trust may require an employee not:

8.7.1 to attend the Trust or an Academy at any time; or

8.7.2 to communicate with colleagues, parents, pupils and governors the fact of their suspension or the fact of or nature of the allegations against him/her except:

8.7.2.1 with the prior agreement of the Principal,

8.7.2.2 where following the investigation, an employee is called to a formal disciplinary meeting when he/she may then approach governors, parents or pupils as potential witnesses but this must be done via the Investigating Manager to avoid any breach of the Data Protection Act or confidentiality.

8.7.2.3 where he/she is called to an interview with the Investigating Manager or a disciplinary meeting when he/she may approach work colleagues for the purposes of identifying a willing work companion but only if he/she does not have a trade union representative.

8.8 During a period of suspension the Trust may suspend an employee's access to his/her email account/intranet.

8.9 During a period of suspension, the Trust may take such steps as necessary to cover an employee's lessons or other commitments.

9. FORMAL PROCESS

9.1 Step 1 - Investigation

9.1.1 The Investigating Manager will conduct an investigation into the alleged conduct. The purpose of an investigation is for the Trust to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee, before any decision is taken to proceed with a disciplinary hearing. The extent of the investigation required will depend on the nature of the allegations and will vary from case to case.

9.1.2 The Investigating Manager may appoint any other person from within the Trust or externally to assist in the investigation.

9.1.3 The investigation may include a face-to-face interview with an employee, but these are not mandatory. Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held. An employee may, if he/she wishes, provide a written statement or response to the Investigating Manager instead.

9.1.4 An employee is required to co-operate fully and promptly with the Investigating Manager to ensure that the investigation can be completed as swiftly and thoroughly as possible.

9.1.5 The Investigating Manager will normally produce an Investigation Report setting out evidence and detailed allegations and a recommendation on whether there is a potential disciplinary case to answer.

9.1.6 An employee will be sent a copy of the Investigation Report.

9.1.7 The Investigating Manager may be required to attend a formal disciplinary meeting to present the findings of their investigation.

9.2 Step 2 – Disciplinary Meeting

9.2.1 If the Investigation Manager recommends that the matter should proceed to a formal disciplinary meeting, the employee shall be required to attend a formal disciplinary meeting with the Disciplinary Manager.

9.2.2 The disciplinary meeting shall take place at least 5 working days after the disciplinary invitation and hearing papers were sent at the same time to the employee.

9.2.3 The Disciplinary Manager shall consider all the evidence presented and the employee shall have an opportunity to present evidence in his/her defence and any evidence in mitigation.

9.2.4 The Disciplinary Manager may adjourn the disciplinary meeting to allow further investigations in the light of the employee's evidence and may reconvene if appropriate to give him/her an opportunity to comment on any further evidence produced by further investigations.

9.2.5 The Disciplinary Manager is not required to hear oral evidence from witnesses and may rely on written evidence.

9.2.6 If the Disciplinary Manager does decide to hear oral witness evidence, the employee will be given an opportunity to comment on it during the meeting.

9.3 Step 3 - Appeal

9.3.1 If the Disciplinary Manager decides to impose a formal disciplinary sanction, the employee will have the right to appeal to the Appeal Manager provided that he/she does so in writing to the Disciplinary Manager within 5 working days of the written notification of the disciplinary decision.

9.3.2 An appeal must set out the grounds of appeal in detail. This will enable the Appeal Manager to determine if the appeal is to be by way of a rehearing of the case or by way of a review of the case.

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

9.3.4 The Appeal meeting will normally take place within 20 working days of the notice of appeal being received by the Disciplinary Manager.

9.3.5 The Appeal Manager may not impose a more severe sanction than that imposed by the Disciplinary Manager.

9.3.6 The Appeal Manager may consider any new evidence produced by the employee not available to the Disciplinary Manager.

9.3.7 The Appeal Manager may only consider new evidence produced by the Disciplinary Manager if it touches upon the employee's credibility in relation to evidence he/she has already given or if it rebuts any new evidence produced by the employee or any assertions made by him/her in the grounds of appeal.

9.3.8 The Appeal Manager is not required to hear oral evidence from witnesses and may rely on written evidence.

9.3.9 If the Appeal Manager does decide to hear oral witness evidence, the employee will be given an opportunity to comment on it during the meeting.

9.3.10 The employee will be informed in writing of the Appeal Manager's decision as soon as possible, and usually within 10 days of any appeal meeting. There is no further right of appeal.

10. FORMAL SANCTIONS

The Disciplinary Manager may impose the following sanctions:

10.1 A Verbal Warning

10.1.1 A Verbal Warning will remain live for 6 months from the date that the Disciplinary Manager's written decision was sent to the employee.

10.1.2 For a first disciplinary offence (ignoring any informal action), a Verbal Warning would be the normal response.

10.1.3 Once the Verbal Warning has expired, it will be removed from an employee's formal record (with the exception of any issues relating to safeguarding) and disregarded in deciding the outcome of any future formal procedure.

10.2 A First Written Warning

10.2.1 A First Written Warning will remain live for 12 months from the date that the Disciplinary Manager's written decision was sent to the employee.

10.2.2 A First Written Warning would normally be given for a second disciplinary offence or discovered during the currency of a live Verbal Warning (even if that Verbal Warning related to a different type of misconduct).

10.2.3 A Verbal Warning could be given for serious misconduct regardless of previous disciplinary history if the conduct is sufficiently serious.

10.2.4 Once a First Written Warning has expired, it will be removed from an employee's formal record (with the exception of any issues relating to safeguarding) and disregarded in deciding the outcome of any future formal procedure.

10.3 Final Written Warning

10.3.1 A Final Written Warning will remain live for 18 months from the date that the Disciplinary Manager's written decision was sent to the employee.

10.3.2 A Final Written Warning would normally be given for a third disciplinary offence committed or discovered during the currency of a live First Written Warning (even if that First Written Warning related to a different type of misconduct).

10.3.3 A Final Written Warning could be given for more serious misconduct regardless of previous disciplinary history if the conduct is sufficiently serious.

10.3.4 Once a Final Written Warning has expired it will be removed from an employee's record (with the exception of any issues relating to safeguarding) and disregarded in deciding the outcome of any future formal procedure.

10.4 Dismissal on notice

10.4.1 Dismissal with due contractual notice would be given for a disciplinary offence (other than an act of gross misconduct), committed or discovered during the currency of a live Final Written Warning (even if the Final Written Warning related to a different type of misconduct).

10.4.2 For the avoidance of doubt, the notice commences immediately and does not await the outcome of any appeal.

10.4.3 Where the employee's contract of employment contains a clause providing for payment in lieu of notice, the Trust may exercise that clause to bring an employee's contract to an end with immediate effect.

10.4.4 The Trust will inform relevant bodies as required.

10.5 Dismissal without notice or compensation

10.5.1 Dismissal without notice or compensation (also known as Summary Dismissal) will only occur if an employee has committed an act of gross misconduct or otherwise have destroyed the trust and confidence required between the employee and the Trust.

10.5.2 For the avoidance of doubt the dismissal takes effect immediately and does not await the outcome of any appeal.

10.5.3 Appendix 2 contains a **non-exhaustive** list of matters which the Trust considers may amount to gross misconduct.

10.6 Voluntary demotion as an alternative to higher formal sanction

10.6.1 The Disciplinary Manager may offer an employee the option of taking a voluntary demotion as an alternative to a higher formal sanction.

11. DIRECTOR PANELS

11.1 Director Disciplinary and Appeal Panels shall comprise two/three non-staff Governors or Directors not previously involved in the matter.

11.2 In the event that there are insufficient numbers of Governors or Directors available to participate in a Panel, the Chair of Directors may appoint associate members to solely participate in the appropriate Panel.

12. RIGHT TO BE ACCOMPANIED

12.1 If an employee is the subject of disciplinary allegations leading to a disciplinary interview by the Investigation Manager or a meeting with the Disciplinary Manager or Appeal Manager he/she may be accompanied at such interview or meeting by a companion who must be either a willing work colleague not involved in the substance of the allegations against the employee or an accredited trade union representative. A Trade Union representative is anyone appearing on the certification officers list of a Trade Union

12.2 The employee must let the relevant Manager know who his/her companion will be at least one working day before the interview or meeting.

12.3 If the employee has any particular need, for example, a disability which causes him/her a substantial disadvantage, adjustments may be made to the procedure to allow him/her to participate and in limited circumstances this may include allowing the employee to be accompanied by someone other than is listed in clause 12.1.

12.4 The companion can address the meeting in order to:

12.4.1 put forward the employee's case

12.4.2 sum up the employee's case

12.4.3 respond on behalf of the employee to any view expressed at the interview meeting.

12.5 The companion can confer with the employee during the interview meeting.

12.6 The companion has no right to answer questions on the employee's behalf, or to address the interview meeting if the employee does not wish it, or to prevent the employee from explaining his/her case.

12.7 Where the employee has identified a companion to the relevant Manager and the companion has confirmed in writing to the relevant Manager that they cannot attend the date or time set for the interview meeting, the relevant Manager may postpone the interview meeting provided that the employee has suggested an alternative date within 5 working days of the original date set by the Trust, to a date or time agreed were possible with the companion provided that it is reasonable.

13. TIMING OF MEETINGS

13.1 Meetings under this procedure may:

13.1.1 need to be held when an employee is timetabled to teach

13.1.2 exceptionally be held during planning preparation and administration time if this does not impact on lesson preparation

13.1.3 be held after the end of the Academy day however meetings will be held during the Academy day where possible.

13.1.4 not be held on days on which an employee would not ordinarily work.

13.2 Meetings may take place in the absence of an employee, in the event he/she does not attend or is not able to attend a scheduled meeting and it is considered appropriate by the Trust to do so in the relevant circumstances.

14. VENUE FOR MEETINGS

14.1 If the allegations are sensitive, the relevant Manager may hold the interview or meeting off the Trust or Academy site.

15. TRADE UNION OFFICERS

15.1 Where disciplinary action is being considered against an employee who is a recognised trade union representative, the normal disciplinary procedure should be followed. Such matters should be discussed at an early stage with an official employed by the union, after obtaining the employee's agreement.

16. CRIMINAL OFFENCES

16.1 If an employee is charged with, or convicted of, a criminal offence (outside of employment) this will not normally in itself be considered a reason for disciplinary action. In such circumstances, the facts of the case would be clarified through a formal investigation and then consideration would be given as to whether the matter warrants formal disciplinary proceedings, having taken into account whether the alleged incident, act, or behaviour affects an employee's suitability for their job and/or the reputation of the Trust. In the case of teachers the content and effect of the Teachers Standards will be taken into account when deciding whether, or not, the matter may warrant formal disciplinary sanctions.

17. REFERRAL

17.1 Where a teacher is dismissed for serious misconduct (or may have been dismissed for serious misconduct if the teacher had not resigned) the Trust must consider whether to refer the circumstances to the Department of Education or the Teaching Regulation Authority under section 141D of the Education Act 2002, which came into force on 1 April 2012

17.2 Where a person working within the Trust (whether a teacher or not) is dismissed or would have been dismissed if they had not resigned) because that person committed conduct:

17.2.1 which endangered a child or was likely to endanger a child

17.2.2 which if repeated against or in relation to a child, would endanger that child or would be likely to endanger him

17.2.3 involving sexual material relating to children (including possession of such material)

17.2.4 involving sexually explicit images depicting violence against human beings (including possession of such images of a sexual nature involving a child)

17.3 The Trust must refer that person to the Disclosure and Barring Service under section 35 of the Safeguarding Vulnerable Groups Act 2006.

Appendix 1

Disciplinary Hearing Procedure

1. The employee and his/her representative and the manager and/or other person presenting the case shall attend the hearing simultaneously to present their respective cases.
2. The Disciplinary Manager will perform the necessary introductions. They may be accompanied throughout by the Trust's appointed HR Adviser
3. The Investigating Manager will present the findings of the investigation and may call witnesses.
4. The employee and/or the employee's representative may put appropriate questions to the Investigation Manager regarding the investigation.
5. The employee and/or the employee's representative will present the employee's case and may call witnesses.
6. If a witness gives evidence orally at the disciplinary hearing the other party may put appropriate questions to it (with the exception of child witnesses).
7. The Disciplinary Manager may ask questions of the Investigation Manager, any witnesses or the employee at any point during the hearing.
8. The employee and/or the employee's representative will have an opportunity to sum up the employee's case.
9. The hearing will then be adjourned for the Disciplinary Manager to deliberate, review the evidence and make a decision on the outcome.

Appeal Hearing Procedure

1. The employee and his/her representative presenting the appeal and the Investigation Manager and/or other person shall attend the hearing simultaneously to present their respective cases.
2. The Appeal Manager will perform the necessary introductions. They may be accompanied throughout by the Trust's appointed HR Adviser.
3. The employee and his/her representative will present their appeal and may call witnesses.
4. The Investigation Manager or other person may put appropriate questions to the employee regarding the appeal.
5. The Investigation Manager or other person will present the response to the appeal and may call witnesses.

6. The employee and his/her representative may put appropriate questions to the Investigation Manager and/or other person regarding their response.
7. If a witness gives evidence orally at the disciplinary hearing the other party may put appropriate questions to it (with the exception of child witnesses).
8. The Appeal Manager may ask questions of the Investigation Manager and/or Disciplinary Manager, any witnesses or the employee at any point during the hearing.
9. The Investigation Manager or other person, followed by the employee and/or the employee's representative will have an opportunity to sum up their respective cases.
10. The hearing will then be adjourned for the Appeal Manager to deliberate, review the evidence and make a decision on the outcome.

Appendix 2 - non-exhaustive list of matters which the Trust considers may amount to gross misconduct

1. Breach of conditions of employment as defined in the Contract of Employment issued relating to the character and the Trust;
2. Serious acts of insubordination;
3. Serious breaches of Financial regulations or other operational regulations;
4. Gross negligence in the performance of duties;
5. Theft from the Trust, its employees or members of the public or other acts of dishonesty;
6. Serious breach of duty concerning the handling of confidential information; Serious breach of health and safety rules;
7. Failure to provide safe working environment for children and young people;
8. Serious breaches of the Trust's policies and procedures around safeguarding, including the inappropriate use of social media
9. Serious acts of chastisement towards students, in direct contravention of the Trust policies regarding the management of student behaviour;
10. Taking drugs or alcohol on Trust premises for other than medical reasons;
11. Buying, selling or offering drugs on Trust premises;
12. Offering alcohol to students;
13. Fraud;
14. Falsification of information, for example, qualifications or other relevant personal details in seeking and obtaining employment or promotion; information contained in time sheets, overtime claims, invoices, accounts, records or medical certificates;
15. Fighting, violent, offensive, abusive or indecent behaviour;
16. Unlawful acts of discrimination within the workplace;
17. Serious breaches of confidence (subject to the Public Interest (Disclosure) Act 1998).