



THE **LEARNING** PARTNERSHIP

Disciplinary Policy and Procedure

Policy lead:	Director of Human Resources
Last review date:	December 2021
Next review date:	December 2023
Approval needed by:	Finance and Staffing Committee

This policy applies to The Learning Partnership Academies Trust employees only, does not form part of an employee's terms and conditions of employment and is not intended to have contractual effect. However, it does set out current practice and policy and employees are strongly advised to familiarise themselves with its content.

This policy does not apply to the following;

- issues related to alleged capability, except where it is considered to be a wilful refusal by the employee to carry out their duties
- Support staff within their probation period

1. Principles

The Disciplinary Policy will support the Trust in maintaining the highest standards of professionalism within the workplace. It will provide a consistent but flexible approach in dealing with a variety of situations. It will aim to be fair to all parties and adhere to the principles of Natural Justice, being: lawful; rational; reasonable; fair; proportionate; and evidential. If there are any disability or language issues affecting the employee or their representative these will be reasonably addressed so that any formal proceedings can take place fairly

The Trust reserves the right to vary or amend its disciplinary policy and procedure as it considers the particular circumstances of the case reasonably require and reserves the right not to follow the Disciplinary Policy and Procedure in respect of employees with less than two year's continuous service (if employed after April 2012) or with less than one year's continuous service (if employed before April 2012) as per employment law.

Rules set standards of performance and behaviour whilst the procedures are designed to help promote fairness and consistency in the treatment of individuals. It is the aim of the rules and procedures to emphasise and encourage improvement in the conduct of individuals where they are failing to meet the required standard. However, it is recognised that where improvement is not possible dismissal may result.

It is important to deal with disciplinary matters promptly, in a firm, fair and consistent manner, ensuring objectivity is applied at all times. Where possible, managers/Headteachers will try and resolve issues of minor misconduct at the earliest opportunity and with the least possible formality. Where problems are not resolved using an informal approach or if circumstances are considered sufficiently serious to warrant formal investigation, formal disciplinary action will be considered.

Every reasonable effort will be made to ensure that any action taken under this procedure will be fair and all employees will be given the opportunity to state his or her case and appeal against any decision he or she considers to be unjust.

This procedure should only be used where problems with conduct cannot be resolved through advice and encouragement, training or increased support. In cases of poor performance this procedure will only be used once an employee has been referred from the organisation's formal capability procedure.

The following procedures will be adhered to when following the disciplinary process:

- Employees will be made fully aware of the standards of performance, action and behaviour required through reference to the Code of Conduct;
- Disciplinary action, where necessary, will be taken without unreasonable delay and in a fair, uniform and consistent manner. Unless otherwise stated it would be expected that the disciplinary process would be initiated within 10 working days of an investigation being completed, unless there are exceptional mitigating circumstances;
- An employee will only be subject to disciplinary action once there has been a reasonable and thorough investigation of the facts;
- The employee will have an opportunity to present his or her side of the case at a formal disciplinary hearing convened under this policy and procedure;
- All employees will have the right to be accompanied by a fellow employee or a representative from a recognised trade union, at any formal disciplinary or appeal hearing. Please note that an investigatory interview prior to a disciplinary hearing is not a formal stage in the disciplinary process;
- The individual academy may ask an employee invited to a meeting to provide in advance of the meeting the name and capacity of their chosen companion;
- The individual academy may object to any representative who is not a colleague, trade union representative, or official employed by a trade union. The individual academy may also object to a representative if in its opinion the chosen companion may have a conflict of interest or may prejudice the meeting; or if the chosen companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards;
- During any disciplinary hearing the employee will have a full and fair opportunity to state his or her case and answer any allegations that have been made;
- During any hearing, the employee will also be able to ask questions, present evidence, and be given an opportunity to raise points about any information provided by witnesses or relevant documentation;
- A companion is entitled to address the hearing to put the employee's case, sum up that case, respond to any views expressed at the hearing and to confer with the employee during the hearing. The companion is not entitled to answer questions on behalf of the employee or address the meeting if the employee does not wish him/her to do so. Nor can the companion prevent the employee from explaining the case or prevent any other person from making a contribution to the hearing;
- Requests to call witnesses or cross examine witnesses will be considered and accommodated where reasonable, practicable and proportionate in the circumstances of the case and where this does not conflict with any overriding duty the individual academy may owe to another

employee;

- Normally, no employee will be dismissed for a first breach of discipline except in the case of gross misconduct;
- If an employee is subject to the disciplinary process, he/she will receive both an explanation of the penalty imposed and will be entitled to appeal against the penalty in accordance with the appeals process set out in this policy and procedure;
- The individual academy will seek the support of a HR advisor/consultant to advise the disciplinary panel;
- The employee will be treated with respect and given opportunity for breaks;
- Where an employee is persistently unable or unwilling to attend a disciplinary hearing without good cause, employers may make a decision on the basis of the available evidence.

Malicious allegations

If an individual makes an allegation in good faith but it is not confirmed by the investigation, no action will be taken against them. If, however, an employee makes an allegation frivolously, maliciously or for personal gain, disciplinary action may be taken against them.

Anonymous allegations

The Academy/MAT does not encourage the making of anonymous allegations and will only consider these in exceptional circumstances. Any decision to consider anonymous allegations will be at the absolute discretion of the school. In exercising this discretion the following factors will be considered:

- the seriousness of the issues raised;
- the credibility of the concern; and
- the likelihood of being able to confirm the allegation.

2. Safeguarding

Where the allegations are of a safeguarding nature and the alleged behaviour might be criminal, involve harm to a child or put a child at risk of harm, the case must be referred to the Local Authority Designated Officer (LADO). If criteria for LADO involvement are met and there is a need for further investigation, the LADO will advise on the need for a LADO strategy meeting or discussion.

No disciplinary investigation should be started by the school until the strategy meeting has met and made its recommendations with regard to next steps.

Where it is decided to proceed with a formal disciplinary investigation, the Academy/MAT does not have to await the outcome of any criminal proceedings. However, the Investigating Officer may need to exercise caution so that it does not impede the police inquiries. In these cases, further advice should be sought from the Human Resources team.

If there is insufficient evidence to establish an honest and reasonable belief in the employee's guilt, the employer may decide to wait for the outcome of the criminal proceedings. The employee could be suspended on normal pay during this period.

3. Disciplinary procedure

Investigation Meeting

In all cases the individual academy will first investigate all the allegations of potential disciplinary offences to establish the facts before deciding whether to invoke the formal Disciplinary Procedure. Employees will be given reasonable notice of the requirement to attend an investigatory meeting (i.e. minimum of 5 working days except in exceptional circumstances) and informed of the right to be accompanied by a companion who would usually be either a work colleague or a representative from a recognised trade union.

A postponement to the investigatory meeting may be granted if the employee or their representative is unable to attend on the proposed date. 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.

If the employee fails to attend the meeting without good reason, or is persistently unwilling to agree to a date for the meeting, the case may progress to a disciplinary hearing based on the information available. In these cases the employee will be given the opportunity to make a written submission which will be taken into consideration before a final decision is made.

Suspension

It may be necessary for the individual academy to suspend an employee whilst an investigation is taking place and this will be considered on a case by case basis. Consideration will be given to whether:

- there is a potential threat to the organisation or other employees or students,
- where it is not possible to properly investigate the allegation if an employee remains at work (for example because they may destroy evidence or attempt to influence witnesses)
- it may also be appropriate where relationships at work have broken down.

During a period of suspension the employee will continue to receive their normal pay i.e. the pay that they would have received if not suspended (which may for example be sick pay if they are off sick).

If an accredited official of a recognised trade union is to be suspended, the case will be discussed, after obtaining the employee's agreement, with a senior trade union representative or paid union official. Suspension should not be delayed in order to have this discussion.

The reasons for suspension will be confirmed in writing to the employee within 3 days of the suspension taking place. It will be made clear to the employee that the suspension is not in itself a disciplinary measure and should not be seen as prejudicing the outcome of any proceedings. The need for the employee to remain suspended will be reviewed periodically and lengthy periods of suspension should be avoided. It should not normally extend beyond three months.

The employee will be offered the provision of an independent person who will provide personal and confidential support during the suspension. This person will normally be an Academy/MAT based employee (with no involvement in the case).

Regular contact will be maintained with the employee by the Head Teacher/Manager in order to update them on the progress of the case

During the period of suspension the employee must adhere to any conditions set out in the letter of suspension. Any breach of those conditions may result in pay being stopped immediately, and may of itself be a ground for disciplinary action. The conditions of suspension are as follows:

- The employee must be contactable by management during normal school hours;
- The employee must not attend their workplace, contact or discuss the allegations with other employees or parents without the permission of the head teacher/Chair of Governors;
- They may contact their trade union representative or work colleague, and their support officer if one has been allocated; and
- If appropriate, they must return keys, and collect any personal belongings, under supervision.

Setting up disciplinary hearing

If the individual academy decides to invoke the formal disciplinary procedure it will adhere to the following procedure:

1. The employee will be invited in writing to attend a disciplinary hearing.
2. In the invitation letter the individual academy will set out the issues or allegations that are to be considered, the basis for them, indicate how seriously these are being viewed, the potential consequences and detail any intention to call witnesses.
3. The individual academy will attach any relevant documentation including any relevant witness statements to the invitation letter.
4. The letter will also detail the employee's statutory right to be accompanied by a companion who would usually be either a work colleague or a representative from a recognised trade union and confirm how this right can be exercised.
5. The individual academy will give reasonable notice of the requirement to attend the disciplinary hearing in order to allow the employee a reasonable period of time (i.e. minimum of 5 working days except in exceptional circumstances) to prepare a case.
6. A postponement may be granted if the employee or their representative is unable to attend on the proposed date. 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.
7. If the employee fails to attend the hearing without good reason, or is persistently unwilling to agree to a date for the hearing, the hearing may take place in the absence of the employee based on the information available. In these cases the employee will be given the opportunity to make a written submission which will be taken into consideration before a final decision is made.
8. Disciplinary hearings where dismissal is not contemplated as a potential disciplinary sanction should the allegation(s) be proved will usually be conducted and determined by a member of the

Senior Leadership Team or the Headteacher, or in the case of disciplinary proceedings involving the Headteacher, the Chair of Governors or other Appointed Person. Disciplinary hearings where dismissal may be contemplated as a potential disciplinary sanction should the allegation(s) be proved will usually be conducted and determined by the Headteacher, Chief Executive or a panel of three governors.

Any disciplinary hearing will be conducted in a manner to ensure that:

1. The employee will be given a full and fair opportunity to answer any allegations against them and to present his or her case and any relevant evidence he or she wishes to be considered and on which he or she would like to rely.
2. The hearing will be minuted by a note taker and the employee will be supplied with a copy of the minutes as soon as is reasonably practicable after the hearing.
3. No decisions will be reached during the hearing itself. The individual academy will need to consider all the evidence together with the representations the employee has made, and in some cases may need to carry out further investigations before a decision can be reached.
4. Once a decision has been reached, the individual academy will write to the employee to confirm the outcome of the hearing.
5. Where the decision has been to take formal disciplinary action against an employee, he or she will be informed of the nature of the disciplinary sanction, the reasons behind the decision and any other conditions that he or she may be required to satisfy as a result of the disciplinary process.
6. Where a disciplinary sanction has been imposed, he or she will also be informed of his or her right to appeal and the process to be followed should the employee wish to exercise this right in relation to the disciplinary decision reached.

Severity of Disciplinary Action

The severity of disciplinary action (if any) will be determined by the severity of the offence and any prior “live” disciplinary sanctions in the employee’s history. Due consideration will be given to any bona fide mitigating circumstances raised during the disciplinary process. The following is provided as guidance only. Employees subject to disciplinary proceedings will be dealt with at the appropriate intermediate stage of the disciplinary procedures, usually at written warning stage, which could be a final warning, so that any further misconduct could result in dismissal on notice. Disciplinary procedures can commence at any stage. The importance of this is that a case of misconduct could be serious enough to warrant, for example, a final warning even though it is a “first offence”. This is consistent with the Acas Code of Practice on Disciplinary and Grievance Procedures.

Minor Misconduct

Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally. A quiet word is often all that is required to improve an employee’s conduct or performance. The employee will be invited to attend an informal meeting by their line-manager where an explanation of the minor misconduct will be given. The line-manager will give constructive feedback and the employee should express their views on the issue. This is separate from the formal part of this disciplinary procedure. The manager will explain to the employee what needs to be improved, and

put in place any measures to support the employee. In some cases additional training, coaching and advice may be what is needed. The employee's conduct will be reviewed at a later date and both parties will agree any informal action and a date for the review. Notes should be kept by the manager of this meeting but not placed on the employee's file. The employee should be advised that if their conduct or performance does not improve they will be moved to Stage 1 of this procedure.

There will be situations where matters are more serious or where an informal approach has been tried but is not working. If informal action does not bring about an improvement, or the misconduct or unsatisfactory performance is considered too serious to be classed as minor, employers should provide employees with a clear signal of their dissatisfaction by taking formal action.

Verbal Warning (with Management Guidance/Instruction)

Following the verbal warning a written record of this will be forwarded to the employee and a copy of this added to the employee's record. Warnings will remain 'live' for a period of 6 months.

First Written Warning

This will generally be applied as the first step of corrective action following unsatisfactory performance or conduct offences.

A first written warning imposed as an outcome to the disciplinary process will be placed on the employee's personnel file and considered 'live' for a period of 12 months. This will be notified to the employee in the disciplinary outcome letter.

The individual academy will also specify in the case of performance issues, reasonable and clear targets for improvement that the employee is required to attain within a reasonable review period. The individual's Appraisal targets may be reviewed and changed to reflect this.

Final Written Warning and Dismissal

For more serious first offences, such as serious misconduct, the individual academy may impose a final written warning.

Alternatively, where an employee persists with an offence in relation to which they have a current and active first written warning or where an employee fails to achieve the required improvements within the review period specified in a previous disciplinary outcome, the individual academy may impose a final written warning having followed the disciplinary procedure in respect of any persisting or additional offences. Final written warnings will remain 'live' for a period of 24 months.

Continued failure to improve or repeat offences during an active period of a current final written warning may result in dismissal with notice or payment in lieu of notice.

Where an allegation of gross misconduct is upheld the individual academy will normally dismiss summarily i.e. without notice or payment in lieu of notice. Employees should refer to the non-exhaustive list of examples of conduct that the individual academy would normally regard as constituting gross misconduct.

Alternative Disciplinary Sanctions

The individual academy may also consider and impose, having followed the Disciplinary Procedure in each case, additional or alternative sanctions including, but not limited to, demotion, disciplinary transfer, loss of seniority/pay or suspension without pay, as an alternative to dismissal.

Record Keeping

Although disciplinary records will be retained by the individual academy, they will not always remain active. Warnings will be disregarded for disciplinary purposes after 6 months in the case of a management instruction. The first written warning will normally remain active for 12 months and the final written warning normally for 24 months. Provided the employee's conduct is satisfactory throughout the period of the warning, the warning will ordinarily be disregarded for future disciplinary purposes. However, there may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force only to lapse thereafter. Where this happens it may be reasonable to use expired warnings as part of the employee's objective work history when considering future disciplinary sanctions. However expired warnings will not be used as part of a totting up process, i.e. added together to create a sequence of events.

If a warning has expired, it will not be used as part of a reference. However, where there is a safeguarding issue, the matter may require a referral to the Teaching Regulation Agency and/or the Disclosure and Barring Service (DBS). Before reporting, any safeguarding concern must be investigated first and sufficient evidence and information gathered to establish if the allegations have foundation.

However, before referral to the DBS, two conditions for referral must both be met. These are:

- 1 when a decision is taken to dismiss an employee following a full investigation and a disciplinary hearing (or where an employee has left of his/her own accord pending a disciplinary outcome, the finding of which would have been a dismissal **and**
- 2 when the individual academy thinks that an employee's actions have harmed a child or put them at risk or that there has been no harmful action or inaction but that a risk of harm to the child still exists.

4. Conduct

Misconduct may range from minor instances of inappropriate behaviour to serious misconduct (known as gross misconduct). Every case needs to be dealt with under the Trust's disciplinary procedure as established by the governing body. Typical examples of minor, more serious and gross misconduct are given below.

Misconduct

Misconduct of a minor nature may include:

- Poor timekeeping
- Higher than expected levels of absence
- Unauthorised absence
- Leaving the workplace during working hours without permission
- Infringements of the dress code
- Non-attendance at meetings that the employee is required to attend
- Ignoring reasonable requests and instructions given by management
- Minor breaches of the Trust's computer procedure
- Failure to undertake designated duties
- Failure to meet internal deadlines, including writing reports to time
- Failure to follow internal procedures
- Minor misuses of the individual academy's or Trust's resources

The above list is not intended to be exhaustive.

If a dismissal for misconduct is to be fair, the employer must first follow a fair disciplinary procedure, which will normally include a series of warning. In the first instance, the employee may receive a verbal warning.

Where necessary, employees subject to disciplinary proceedings will progress through the stages of the disciplinary process and ultimately are liable to be dismissed on notice.

Serious Misconduct

Serious misconduct may include:

- Inappropriate language or behaviour to pupils or parents
- Negligence
- Continuous or frequent occurrences of unauthorised absence
- Failure to meet external deadline, e.g. for coursework moderation or written reports
- Failure in departmental or management responsibilities, e.g. setting the wrong coursework, incorrect examination entries
- Failure to abide by or meet reasonable requests or management instruction.

The above list is not intended to be exhaustive.

Gross Misconduct and Summary Dismissal

Gross misconduct may be defined as behaviour which brings about the irretrievable breakdown of the bond of trust and confidence between the employer and the employee.

Usually, but not invariably, this will be restricted to very serious, often isolated offences, as listed below:

- Serious breaches of the Trust's Safeguarding and Child Protection Policies and Procedure.
- Theft of individual academy, Trust or employees' property
- Fraud or embezzlement of individual academy's/Trust's monies
- Deliberate falsification of personal, individual academy or Trust records
- Clocking offences
- Incitement of, or actual acts of, serious discrimination
- Fighting or physical violence
- Serious bullying or harassment, including threatening behaviour
- Serious misuse of the employer's resources
- Deliberate, wilful or malicious damage to property
- Serious misuse of the individual academy's computer facilities, including misuse of e-mail and internet access
- Serious insubordination
- Deliberate or flagrant failure to follow the individual academy's or Trust's procedures and regulations
- Being under the influence of alcohol or illegal drugs at work
- Serious negligence which causes or might cause unacceptable loss, damage or injury

- Any breach of a legal statute, which has a direct effect on the employee's ability to undertake stated duties and/or on the desired characteristics of his or her position
- Allowing or assisting any unauthorised person to gain entry to the premises
- Driving on School business without an appropriate licence and/or the appropriate insurance
- Any breach of trust or unauthorised disclosure of information relating to the School's affairs to third parties.

The above list is not intended to be exhaustive.

An employee may be liable to summary dismissal without notice or pay in lieu of notice if he or she is found guilty of gross misconduct.

Behaviour Outside Working Hours

Whilst the individual academy will not generally investigate or involve itself in the private lives of its staff, any outside activity or incident which may reasonably be regarded as significantly detrimental to the reputation of the individual academy or Trust, carried out wilfully or otherwise, may lead to a disciplinary process and ultimately dismissal, if appropriate.

As a condition of employment, employees are required to notify the individual academy immediately of any criminal charges, cautions or conviction, plea of guilty or not guilty in respect of a criminal offence. Criminal charges or convictions for offences of dishonesty or violence committed outside of working hours may result in disciplinary action being taken against the employee, up to and including summary dismissal. The Academy/MAT will carefully consider the circumstances in each case and whether or not the charge or conviction will affect or is likely to affect the suitability of the employee for their position or the reputation of the Academy/MAT or whether the charge or conviction could seriously undermine the trust and confidence that the school has in the employee. In these circumstances the same procedures will apply.

5. Disciplinary Appeal Procedure

The Disciplinary Rules and Procedures incorporate an employee's right to lodge an appeal in respect of any disciplinary action taken against them.

If an employee wishes to exercise this right of appeal, he or she should write in the first instance to the Headteacher who will liaise with the Chief Executive to convene an appeal hearing, within 10 working days of the decision he or she is complaining against, setting out the grounds and basis for the appeal. In the situation of new evidence coming to light, this will be provided first to the Chair of the original hearing so that the Chair can have the new evidence investigated if appropriate, and consider whether it means the outcome of the hearing will be changed, without the case proceeding to an appeal.

Disciplinary appeals will usually be conducted and determined by a panel including the Chief Executive and/or a designated Headteacher.

The employee has the right to be accompanied by a work colleague, trade union representative or an accredited trade union official at any disciplinary appeal meeting and will be given a full opportunity to state his or her case and put forward his or her version of events.

The appeal hearing will be minuted by a note taker and the employee will be supplied with a copy of the minutes as soon as is reasonably practicable after the hearing.

No decisions will be reached during the hearing itself. The individual academy will need to consider all the evidence together with the representations the employee has made, and in some cases may need to carry out further investigations before a decision can be reached.

The employee will be notified of the result of the appeal in writing without unreasonable delay. The appeal decision is the final stage of the Trust's disciplinary appeal procedure.

6. Relationship with grievance and capability/attendance procedures

If at any stage in the procedure it becomes apparent that the matter is actually one of capability rather than discipline, it is appropriate to switch to the application of the appropriate Capability Procedure.

If an employee raises a grievance related to a disciplinary case, there is no requirement for the disciplinary process to be postponed in order to deal with the grievance, although this could be one option. Consideration should be given to whether a complaint about the disciplinary process or the lead up to the process can be dealt with as part of the disciplinary hearing. However, if the complaint is that the action taken or contemplated is or would be unlawfully discriminatory, or that it is being taken for other reasons than that which has been alleged, the Grievance Procedure should apply.

Where the grievance is unrelated to the disciplinary action, the two procedures should be run in parallel.

Where an employee goes off sick during a disciplinary process as much of the disciplinary investigation should be completed as possible. Where the absence is short term the process can be completed on the employee's return to work, otherwise the Occupational Health Provider should be contacted to determine whether the employee is well enough to take part in the process.

Alternatively the hearing could take place at a neutral venue or the employee could be invited to make a written submission or to nominate a representative to attend the hearing in his or her place.

7. Referring misconduct cases to regulatory bodies

Referring Teachers to the Teaching Regulation Agency (TRA)

The Academy/MAT has a statutory requirement to refer cases to the Teaching Regulation Agency (TRA) where a teacher has been dismissed for misconduct, or would have dismissed them had they not resigned first. (The Teaching Regulation Agency (TRA), an executive agency of the Department for Education, operates as the regulator of the teaching profession on behalf of the Secretary of State).

A referral to the Teaching Regulation Agency (TRA) is appropriate if the alleged misconduct is so serious that it warrants a decision on whether the teacher or head teacher should be prevented from teaching again.

Referring employees to the Disclosure and Barring Service (DBS)

There is also statutory requirement for the Academy/MAT to apply the provisions of the Safeguarding Vulnerable Groups Act (SVGA) 2006 when dismissing a member of staff working with children or

vulnerable adults, where dismissal has occurred on grounds of misconduct which harmed, or placed at risk of harm, a child or vulnerable adults.

Where an individual is dismissed in the above circumstances (or would have been dismissed had they not resigned, retired, been made redundant or transferred to a post not involving regulated activity) and where the circumstances of the case meet the relevant thresholds, the details of the case must be referred to the Disclosure and Barring Service (DBS).

Governing Bodies of Academies/MATS, are responsible for making such referrals as the direct employers.

Guidance on how to make referrals can be found on the Department for Education website and DBS website.