



The
MAST
 Academy Trust

Policy	Disciplinary policy	
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Approver	Trust Board Staffing Committee	

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Objective of Policy
<p>To provide guidance on the policy and process disciplinary of staff.</p> <p>The policy is supported by the ‘ACAS conducting workplace investigations’ as guidance for The Mast Academy Trust as part of any investigation process.</p>

Version Control	
Version Number	Summary of amends from previous version
2.0	Annual review, front cover amends.
3.0	Annual review. Section 5.0 - Inclusion of ACAS conducting workplace investigations as guidance.

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Sign off requirements	
Approvers	Position
Staffing Committee	Trust Board
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1.0 Introduction

The Mast Academy Disciplinary Policy and Procedure sets out the principles for handling disciplinary situations in the workplace, within our schools.

Schools are obliged by law to adopt a disciplinary policy and it is recognised that discipline is necessary for the conduct of school affairs and for the safety and wellbeing of our employees and pupils.

The disciplinary process should consider all professional standards in relation to any decision and future referrals to the relevant body. The primary aim of the disciplinary policy is to address issues of conduct/behaviour, protect children and the reputation of the School.

2.0 Key policy principles

- This policy is in line with the Equality Act 2010 where relevant. The Trust and schools will make reasonable adjustments at all stages of the procedure where necessary.
- An impact assessment is undertaken annually on all staffing policies to ensure that no groups or individuals with protected characteristics are unintentionally disadvantaged by the policy or practice.
- These procedures apply to all school based employees who are directly managed by the schools.
- An investigation will be completed to ensure that any subsequent decision or actions are fair for all parties concerned.
- Where appropriate matters relating to conduct and performance will be managed informally without instigating the formal procedure.
- For disciplinary procedures which relate to possible Safeguarding concerns and allegations, it is essential that the information will be notified to, and shared with, the Local Area Designated Officer, Head Teacher and/or Designated Senior Lead in accordance with the relevant statutory legislation and with due regard for the right and freedoms of the data subject.
- The formal disciplinary procedures will be used where informal attempts to improve conduct are either not appropriate or have failed, or the misconduct is of a serious nature and must be managed formally.
- Misconduct will be dealt with promptly (thus avoiding any potential for escalation). Disciplinary matters will be handled professionally, objectively, fairly and equitably.
- Where the Head Teacher is alleged to have committed an act of misconduct the CEO and the chair of Governors must be notified immediately, who will then determine the appropriate course of action under the guidance of this policy. Where the CEO or CFO are involved this will be the Chair of the Board of Trustees (or nominated Trustee). HR Advice must be sought in these circumstances.
- All employees are required to, and have a responsibility to, co-operate with any investigation into conduct and attend any disciplinary hearings they are required to attend. If they refuse they could be subject to disciplinary action. In the case of non-attendance of the subject of disciplinary action the proceedings will continue within reasonable timescales and with consideration to their absence.

- All employees have the right to appeal any formal disciplinary sanction given against them.
- If disciplinary concerns are raised in relation to Trades Union representatives it is good practice to inform the appropriate full time Trade Union officer.
- If a disciplinary relates to a safeguarding issue, the Headteacher MUST notify the LADO in accordance with the Trust' Safeguarding policy on the [Trust website](#).

3.0 Support available during the disciplinary procedure

Any person who may be the subject of a disciplinary process can seek support from one of the following, as appropriate to the specific employee;

- Professional Associations or Trade Union
- The Mast Academy Occupational Health Service
- Schools advisory service

4.0 Informal resolution of disciplinary issues

In most circumstances the Headteacher or nominated representative (e.g. Deputy/Assistant Headteacher or supervisor) would carry out a brief preliminary investigation. This could simply be a private conversation with the employee, a two-way conversation enabling both parties to discuss the allegation(s). Sometimes other relevant witnesses may also be approached for further information. The purpose of this investigation is to gain information to evaluate how serious the allegation(s) are and to determine whether further action needs to be taken.

Because this is an informal meeting, employees do not have a 'right' to representation from their trade union or to be accompanied by a work colleague. However, it is recognised that there can be benefit in contacting the Trade Union at an early stage on an informal basis to discuss any issues. This can in some cases help prevent cases from escalating to the formal stage unnecessarily; early resolution of issues can underpin good employee relations in your organisation.

If an employee wishes to take advice or the nature of the meeting changes it is good practice to adjourn and seek advice.

Cases of minor misconduct or unsatisfactory behaviour can usually be dealt with informally. In some cases, additional training, coaching or advice on future conduct/behaviour may be enough to resolve problems. Brief notes should be kept of informal action for reference purposes, and provided to the employee within 5 days.

If informal action does not bring about a change in conduct/behaviour or the issue is considered too serious to resolve in this way, then formal action may be taken.

The use of a mediator can be very effective when there has been a breakdown in relationships or conflict. In most cases the mediator will arrange one or possibly a couple of sessions for all parties involved to attend. The purpose being to 'air' any issues and agree a way forward. The Mast Academy Trust has accredited Mediators; for further information, contact the Headteacher.

5.0 Formal investigation

Before commissioning or conducting any investigation Headteachers/Chairs of Governors and managers may wish to seek advice from the appointed HR service available to the Mast Academy Trust.

Advice needs to consider the appropriate level for the investigation to be carried out; in most cases it would be expected that Deputy/Assistant Headteacher or another appropriate person or line manager would conduct the investigation, including an appropriate leader from within the Trust. Where the case is more complex an independent investigating officer can be provided by The Mast Academy Trust. The investigating officer will have no prior involvement with or knowledge of the allegations.

It is important to carry out necessary investigations of potential disciplinary matters to establish the facts of the case. In some cases, this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing.

An initial assessment is made, putting together a provisional timescale including taking witness notes and potential dates for the hearing. (In order that all investigations are completed within an appropriate timescale without any unnecessary delays, investigations should continue during school holiday periods where reasonably possible and by mutual agreement for staff who are subject to term time only contracts, including obtaining witness statements from employees. Any refusal by an employee to participate in an investigation during school holiday periods should be noted, along with the reasons given.)

Refer to Appendix A: ACAS conducting a workplace investigation for further guidance on an investigation; Steps 1 and 2.

Step 1: The interview

The interview order needs to be planned on a case by case basis. The following is for guidance only and HR guidance may be sought:

- Prior to the investigation meeting taking place, the employee will be provided in writing with the details of the allegations against them, who the investigating officer is, a copy of this Disciplinary Procedure, and expected timescales for the forward process.
- Witnesses are contacted and may be required to attend an interview or provide a written statement, which will be determined by the investigating officer.
- The employee subject to investigation will be offered the right to be accompanied/represented by a Trade Union or work colleague not involved in the process, which is the responsibility of the employee to arrange.
- The employee is invited to a meeting, with a minimum 10 days notice, to discuss the issues, and written notes of the hearing are kept and signed by the employee.
- The employee is advised of the allegation/s or areas of concern, the purpose of the meeting and the potential outcomes.
- At the interview, the objectives for the investigation are explained: Inquire into the circumstances of the suspected or alleged misconduct: Make the employee aware of the next steps of the investigation.

- If as part of an interview, notes are typed up and the employee is given an opportunity to amend their account before signing. A copy of the notes will be provided to the employee within 5 working days.
- Witnesses are advised that their signed accounts may be used in a formal procedure and given to the employee concerned, and they may have to give evidence personally at a disciplinary hearing, subsequent appeal, or Employment Tribunal.

Refer to Appendix A: ACAS conducting a workplace investigation for further guidance on an investigation; Steps 3 and 4

Additional note: Pupils must not be interviewed unaccompanied, under such circumstances take appropriate advice.

Step 2: Report

The person leading the investigation will collate and analyse the facts and documents and complete a report for the preliminary consideration by the Head Teacher / Governors who commissioned it.

During an investigation recognition will be given to any counter allegations or grievances relating to the issues or incidents being investigated. Should this be the case, consideration should be given to the appropriateness of continuing with the Investigation or dealing with the issue raised in the complaint before proceeding.

If a grievance is raised during the process it does not mean the investigation will automatically cease or be postponed.

NB. The report will draw conclusions, not make recommendations.

Refer to Appendix A: ACAS conducting a workplace investigation for further guidance on an investigation; Steps 5 and 6.

Step 3: Decision making

A decision is made by the commissioning Headteacher/Governors/Trustees; consideration will be made at this stage as to whether a Disciplinary Hearing is required. If the outcome constitutes gross misconduct the commissioning officer must refer to a disciplinary panel.

Step 4: Notification

Notify the employee in writing of the outcome of the disciplinary investigation within 10 working days. If there is a case to answer, the employee must be given copies of all documents to be used in the hearing and advised to their right to Trade Union representation or work colleague present and to call witnesses and submit documentation to be considered at the hearing. The employee to be given at least 10 days' notice of the hearing.

6.0 Formal disciplinary hearing

The Disciplinary panel should be formed in accordance with the Scheme of Delegation. This is likely to mean that in the case of Headteachers and Senior Leaders, the panel will be made up of Trustees. In the case of other staff in school, the panel is likely to be made up of Governors. In the case that a school cannot form a disciplinary committee made up of Governors, Governors from within the Trust may also sit on the panel and/or Trustees. In the case of alleged Gross Misconduct, the panel MUST have at least one representative from the Trust Board on the panel.

The panel should be made up of three colleagues plus an advisor who is likely to part of the HR advisory team.

The Disciplinary hearing manager making the decision at the disciplinary hearing must act reasonably and objectively in the interests of fairness to the School and its employees.

The purpose of the disciplinary hearing is to enable the panel to decide whether it is more likely than less likely that the employee did what is alleged and if so what action to take. (See section on sanctions).

The objectives for the hearing is to provide the opportunity for the presentation and questioning of the evidence, statements and/or witnesses; and for the employee to state their case. Notes are taken and will be used if an appeal is made. A copy of the notes will be provided to the employee within 5 working days. Tape recording of hearings is not permitted by either party.

7.0 Potential outcomes

Potential outcomes under the disciplinary procedure are detailed as per the table below. These will be recorded and the employee clearly informed that if it is a formal warning under this procedure, the nature of the complaint, the implications of the warning, the length of time that the warning will be on their record, their rights of appeal, and that the warning is to be recorded.

Formal Disciplinary Outcomes	Periods these remain on the employee record
No further action	N/A
Recorded Verbal	Minimum 6 months
Written	Minimum 12 months
Final Written (including first and final)	Minimum 18 months
Dismissal with notice	N/A
Summary dismissal	N/A

The outcome letter should clearly outline the allegations and the decision made in relation to each point (if there is more than one issue). Employees must then be sent written confirmation of this within 5 days of the decision, along with notification of their right of appeal.

8.0 Dismissal

Employees should never be dismissed, with or without notice, without a formal hearing and the opportunity to state their case in accordance with the disciplinary procedure. If the decision of a hearing, of those with the authority to dismiss, is to recommend dismissal on the grounds of Gross Misconduct, the person's employment would end immediately at that point. In the case of a dismissal on the grounds of Serious Misconduct the person's employment ends at expiry of the appropriate notice period. However, in cases of Serious Misconduct the dismissed employee would normally receive pay in lieu of notice meaning that their employment ends on the day the decision to dismiss is taken.

Where the disciplinary procedures relate to safeguarding concerns, a disciplinary procedure must be completed. Schools may not enter into compromise agreements and should a colleague not be fit to attend a hearing or has ceased employment at the time of the hearing, the committee should sit in their absence. If they find that gross misconduct or serious misconduct has occurred on the grounds of safeguarding breaches, the Headteacher is responsible for ensuring the DBS/Teacher agency is informed in accordance with the procedure outlined.

If a colleague is dismissed on the grounds of Gross misconduct, the employee should be informed that the school will not provide a reference for future employment

9.0 Alternatives in substitution of dismissal

If the decision is to recommend dismissal, depending on the circumstances of the case and the mitigation presented, one or more of the following alternatives may be given along with a Final Written Warning, in substitution of dismissal.

This could be, but is not limited to:

- a. A period of suspension without pay
- b. Demotion to a lower graded post
- c. Transfer to a different location

There is no appeal right against the alternative as this would be an agreed variation to contract, as long as the employee expressly agrees..

The only appeal is against the original decision to dismiss, therefore should the employee wish to appeal; the decision to dismiss will stand and take effect from the date of the hearing.

10.0 Appeal

Where an employee wishes to appeal against a disciplinary decision, such an appeal is to be held within fifteen working days of the date of the disciplinary outcome letter confirming the decision. The appeal shall be in writing to the Chair of the Governors / Chair of the Board of Trustees and shall specify the grounds for the appeal. No person who heard an earlier disciplinary hearing may take part in the decision at a later disciplinary hearing or an appeal.

Notice for Appeal Hearing

To allow sufficient time for the preparation for an Appeal Hearing a minimum of 20 working days' notice should be given and relevant documentation should be exchanged ten working

days prior to the hearing. An appeal panel may uphold, in complete, the original decision; or, determine the outcome was disproportionate or, dismiss the outcome.

11.0 Precautionary suspension

There may be instances where suspension from duty with pay and benefits is necessary while investigations are carried out, for example:

- Potential gross misconduct cases
- Serious safeguarding concerns
- Some other significant reason

The list is not exhaustive; however, the decision to suspend should only be taken after careful consideration and should be reviewed periodically to ensure it is not unnecessarily protracted. It is important that advice is taken as to how and who carries out the suspension of an employee. Please note that where there is Police involvement you must seek professional advice (E.G. HR and/or Legal) prior to taking action and any concerns relating to safeguarding must be notified to the LADO.

Suspension is not an assumption of guilt and is not considered a disciplinary sanction.

12.0 Sickness absence during disciplinary investigation/hearing

For periods of sickness that arise a reasonable opportunity will be given for employees to personally state their own case. If the employee's return is not expected in the short term (beyond self-certification time scales), the hearing will go ahead once the employee and their Trade Union representative or professional association has been advised. The employee's Trade Union representative or professional association will be given the opportunity to present or provide the employee's written submission.

13.0 Notice periods

Formal Management Meeting Appeal Hearing	10 Days
Disciplinary Hearing	10 Days
Appeal Hearing	10 Days
Appeal Hearing Paperwork Exchange	10 Days

14.0 Criminal offences

All staff employed in a school environment are classed as in '*notifiable occupation*'. Therefore where an alleged criminal offence takes place while the person is on duty, or there might be a connection between an allegation of an employee's criminal offence committed while not on duty, and their ability or suitability for continued employment at the school, particularly if the allegation relates to abusive, inappropriate or unprofessional behaviour, then this must be dealt with under agreed procedures.

All staff have a responsibility to report any criminal cautions, conviction or allegations immediately to the Headteacher and normally be considered within the framework of these procedures.

15.0 Sanctions

What is classified as misconduct or gross misconduct may vary according to the particular circumstances of any given case. The same can be said for what is likely to be regarded as a reasonable sanction for such conduct.

The following lists are not exhaustive. each case will be judged in the context of the incident alleged.

Misconduct

Misconduct is the conduct of a member of staff which is considered to be inappropriate. Where an employee is found guilty of misconduct, it may justify a disciplinary sanction of a written warning or in some more serious cases, a first and final written warning.

Instances of misconduct include:

- Unauthorised absence or persistent lateness from work (Staff Attendance Policy)
- Using bad language in front of pupils
- Failure to follow the policies, practices and requirements of the school
- Unsatisfactory standards of work (not related to capability)
- Inappropriate use of school facilities
- Failure to comply with reasonable instructions from senior staff

Repeated incidents of misconduct may lead to dismissal

Gross misconduct

Gross misconduct is behaviour, on the part of an employee, which is so bad that it destroys the employer/employee relationship, and merits instant dismissal without notice or pay in lieu of notice. (Such dismissal without notice is often called "summary dismissal").

- Instances of gross misconduct include: Employee's conduct to constitute, either impliedly or expressly, a repudiation of the fundamental terms of the contract, it must involve a deliberate and wilful contradiction of those terms; or an act of gross negligence. Inclusion on a list like this does not automatically make the behaviours "gross misconduct" in the eyes of a tribunal.
- Physical violence or assault
- Discrimination, harassment, victimisation and/or bullying of pupils, colleagues or visitors
- Theft
- Sexual offences or misconduct
- Inappropriate relationships with pupils or any other actions that would be classed as a serious safeguarding issue

- Serious breaches of confidentiality
- Deliberately acting in a way that will cause damage to the school's or Trust's reputation as defined in the code of conduct/acceptable usage policy found on the [Trust website](#).
- Deliberately damaging school property

The [Teacher misconduct: the prohibition of teachers](#) from the National College explains that, among other things, the following offences will be serious enough to warrant prohibition of teaching:

- Serious departure from the personal and professional conduct elements of the code of conduct and the Nolan Principles.
- Misconduct seriously affecting the education and/or wellbeing of pupils, and particularly where there is a continuing risk
- Actions or behaviours that undermine fundamental British values e.g. sexism, racism homophobia
- Abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils
- Sustained or serious bullying, or other deliberate behaviour that undermines pupils, the profession, the school or colleagues

Serious misconduct may be considered as an alternative outcome whereby employees will be dismissed with payment in lieu.

Instances of serious misconduct include:

- Repeated misconduct failures to comply with management direction as recorded via outlined sanctions
- In a case where there is evidence of gross misconduct but has mitigating factors which may lead the panel to the alternative outcome

APPENDIX A

The Mast Academy Trust and the investigating officer will use the ACAS Conducting workplace investigations as further guidance.

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Guidance
Conducting
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investigations

June 2019

