

## **Schools Disciplinary Policy & Procedure**

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## **1. INTRODUCTION**

The following disciplinary procedure has been established by the Board of Trustees in line with the powers given under The School Staffing (England) Regulations 2009. In establishing these procedures, care has been taken that the procedure is consistent with the Education Act and Regulations, employment legislation and ACAS code of practice. The initial dismissal decision is not taken by the Executive Headteacher/Headteacher but by a panel of governors. However, it is for the local Academy Council to decide whether or not to delegate this responsibility to the Executive Headteacher/Headteacher in accordance with The School Staffing (England) Regulations 2009.

The Local Academy Council has a responsibility to apply the provisions of this procedure fairly and with full regard to The School Staffing (England) Regulations 2009 and in accordance with the Academy's code of practice.

This policy has been consulted on with the recognised teacher and support staff unions.

## **2. THE PURPOSE**

This policy is designed to maintain appropriate standards of conduct in employment through the application of fair and effective management of disciplinary matters.

The procedure aims to:

- support and encourage observance of acceptable standards of conduct at work;
- be a corrective rather than a punitive process, aimed at improving conduct by advice, counselling and direction rather than by disciplinary measures;
- provide a fair and consistent method of dealing with alleged breaches in standards of conduct.
- provide appropriate disciplinary sanction where the alleged breach of the disciplinary rules has been proven.

The Headteacher is responsible for leading the internal organisation, management and discipline at the Academy in full consultation at all times with the Chair of the Local Academy Council and as necessary, with the Directors and CEO of the Parallel Learning Trust, represented by the Trust's HR Consultant.

The Headteacher is responsible for maintaining acceptable standards of conduct in the Academy and is authorised to take disciplinary action in accordance with the Academy's Disciplinary Rules and Procedure.

## **3. SCOPE AND APPLICATION**

The disciplinary procedure is for use where there are allegations of a breach of the disciplinary rules. There are other procedures, which deal with sickness, capability and grievances.

This disciplinary procedure applies to all staff employed by the Academy, non-teaching and teaching posts, including Headteachers and Deputy Headteachers.

The Trust's HR Consultant should be informed of all disciplinary cases and will advise the Headteacher/Chair of the Academy Council in the management of the case.

Where the Headteacher is the subject of any procedure, the procedures described in this document are modified so that the Chair or other designated Governor, replaces the

Headteacher in initiating any action which has to be taken. References in this document to the Chair could in this context include another designated Governor in place of the Chair, if for any reason s/he were unavailable.

Where the term Headteacher is used in this procedure, with regard to implementation, this could be the line manager, or senior member of staff. This is a matter for the Headteacher to decide with the agreement of the governing body.

#### **4. RESPONSIBILITIES OF ACADEMY COUNCIL**

The Academy Council is responsible for hearing all formal disciplinary cases at a panel, including where the Headteacher is the subject of disciplinary proceedings.

The Academy Council must ensure that:

- employees are aware of the disciplinary procedure and standards;
- they are familiar with the procedures, so that employees are confident that disciplinary matters will be investigated and managed in a fair and orderly manner;
- they apply the relevant stages of the disciplinary procedure and comply with the statutory requirements;
- full and accurate records are kept of all investigations and formal hearings and they are made available, when necessary;
- training is provided for all those who have responsibility for handling disciplinary matters.

Academy Councils are required to establish a disciplinary committee and an appeals committee.

Delegated responsibility - The management of conduct and discipline issues may be delegated to staff other than the Headteacher/Principal. References to the role of the Headteacher/Principal in the policy and procedure include his/her nominee:

- Informal Action - Informal action may be delegated to line managers, where appropriate.
- Formal Action - Formal hearings to consider matters short of dismissal may be delegated to another manager or the Headteacher/Principal.

Where matters are heard by a manager - appeals against any sanction imposed will be heard by the Headteacher. Where the Headteacher has considered the matter – appeals will be heard by a panel of one or more Governors or members of the PLT Executive team. No Governor who has had prior involvement in a particular case should sit on either committee when that case is being considered.

#### **5. RESPONSIBILITIES OF THE EMPLOYEE**

- be aware of and comply with general rules and procedures referred to in their contract and conditions of service and the specific working rules and procedures related to their area of work and workplace;
- comply fully with the disciplinary and other procedures and to co-operate with the processes contained therein.
- ask their line manager or Headteacher when unsure of any aspect of the disciplinary procedure
- arrange their own representation at meetings/hearings

## **6. TRADE UNION REPRESENTATION**

Employees may be accompanied during the formal stages of a disciplinary process, when it is still possible for further disciplinary charges to be brought against them and other individuals, including any witnesses.

The role of the trade union representative includes:

- Attend formal disciplinary meetings, in the role of representative (if requested by member)
- Address meetings to put forward a case, on behalf of member
- Address meetings to sum up a case, on behalf of member
- Respond to any views expressed at meetings
- Confer with the member of staff during meetings.

The Trade union representative / workplace colleague does not have the right to:

- Answer questions on behalf of the member of staff (i.e. if a question is directed at the member of staff)
- Address meetings if the member of staff does not wish it
- Prevent any party from explaining their case.

## **7. GUIDING HEADTEACHERS FOR MANAGING DISCIPLINE**

### **ADVICE, COUNSELLING AND DIRECTION**

An informal discussion between the Headteacher and employee may often be a more satisfactory method of resolving problems than a disciplinary interview. At any informal meeting, the Headteacher will point out shortcomings in conduct and specify the improvement required i.e. make sure the employee understands what needs to be done, how conduct will be reviewed and over what period. The Headteacher will provide an agreed written outcome of these meetings.

An informal discussion must not turn into a formal disciplinary meeting. If it emerges that the matter may warrant action under the formal disciplinary procedure, the Headteacher should adjourn the meeting and inform the employee accordingly. The employee must be informed of the outcome, even if the Headteacher concludes that there is no case to answer.

If informal action, as detailed above, does not lead to the required level of improvements, the formal stages of the disciplinary procedure should be used.

Where it is evident that an employee's behaviour could be treated in other ways (e.g. counselling), these should be considered before disciplinary action is taken.

### **INFORMAL ACTION**

The Headteacher is responsible for advising the employee of how their conduct is failing to meet the required standard and what action is required by the employee.

The informal stages of the procedure should be exhausted before moving to the formal

stages, unless the seriousness of the complaint or incident warrants suspension or immediate formal investigation and a disciplinary hearing.

In the event of a complaint or report of any incident, which is in breach of the disciplinary rules, an investigation should be carried out by the Headteacher (or appropriate manager).

The Headteacher or her/his representative must use the investigation to fully ascertain the facts of the case.

If a point is reached that is inconclusive, but the Headteacher considers that further evidence may be required, then the investigation may be adjourned so that further evidence can be sought. This should be carried out within 10 working days, without undue delay. This must be conveyed to the employee. It may be that no decision can be reached in terms of sanctions other than to dismiss the case without reconvening the investigation. Alternatively, the Headteacher may consider that having started the investigation, there is sufficient reason to move to the formal stage.

If, following a full and proper investigation of the facts and circumstances, no substance to the complaint or allegation is found, or the complaint is deemed to be unfounded, a letter stating this should be sent to all parties concerned.

Where it is found that there is some substance to the case but insufficient to discipline, or where there are mitigating circumstances, the Headteacher may choose informal action aimed at remedying shortcomings instead of formal action.

Where a full investigation of the facts has revealed a minor breach of discipline, it is possible for the Headteacher to issue an informal reprimand without recourse to a formal disciplinary interview or hearing. A note that it was given will be kept for reference purposes by the Academy.

Informal reprimands issued without recourse to a formal disciplinary hearing may result from persistent or frequent breaches of discipline (e.g. lateness) and their purpose is to encourage the employee to improve their conduct. The warnings escalate if the misconduct or incapacity persists, providing every reasonable opportunity has been afforded for the employee to improve. Informal reprimands will be kept for the duration of employment.

## **8. SUSPENSION FROM DUTY**

In cases which appear to involve gross misconduct, or on receipt of a complaint or concern, (which must be confirmed in writing as a matter of urgency), which appears to involve gross misconduct, the Headteacher or Chair may direct the suspension of anyone employed to work at the Academy, pending an investigation of the complaint, incident or alleged offence. In such cases advice should be sought from the Trust's HR Consultant prior to suspension. The Headteacher/Academy Council and also the Executive Headteacher/Director/CEO, as appropriate, must be informed immediately when a suspension is imposed.

An employee can be suspended from duty at any stage during the disciplinary process where it is considered appropriate e.g. either to enable investigations to be made, when further information comes to light or where it is considered unsuitable for the employee to remain in the place of work. Suspension is a neutral act based on the principle that the employee's

presence would put either the person, or others, or the Academy at risk, or would undermine the investigation. In many cases of alleged gross misconduct, it may therefore be prudent to suspend, but it is not essential.

Where an employee is suspended, they will be provided with details of a link person at the school with whom they can 'keep in touch'. Appropriate arrangements so that CPD and training should be made in order that a suspended employee is not treated less favorably to other staff as far as reasonably practicable

Where appropriate other measures to safeguard both the employee and the organisation should be considered before suspending the employee. Such measures could be temporary relocation to another department or PLT Academy; working from home; temporary suspension of certain duties etc.

The Headteacher or Chair is responsible for advising the employee of the reasons for suspension, any conditions relating to it, the action proposed and where known, the likely duration of the suspension. This should all be confirmed in writing.

The employee should return, upon request, any particular items such as keys, laptop computer etc.

Suspension will be with full contractual pay in all instances. The suspension will normally last until the investigation has been concluded or any resulting disciplinary hearing has been held.

The suspended employee is to remain available to attend any investigatory meeting or hearing during the period of suspension during their normal working hours. They should notify management of any authorised annual leave.

Conditions relating to a suspension will include a requirement not to return to the workplace or to contact colleagues without the consent of the Headteacher or the Human Resources Officer involved with the case. An employee who is suspended is entitled to contact their professional association or trade union representative.

Suspension can only be lifted by the CEO.

## **9. CHILD PROTECTION**

Any suspected child abuse including assaults on children must be reported immediately to the Headteacher or the Academy's designated Child Protection Officer and the LA's Child Protection Officer. (LADO). The Child Protection Procedures must be followed. This will include reporting the concern/incident to the CYPS Social Care Team. The interviewing of children who may have been abused requires considerable skill and experience and may be carried out by a social worker or police child protection officer. If in any doubt the Headteacher or designated officer should seek advice from the area social worker and child protection team. In all cases the Trust's HR Consultant must be informed.

If the suspected abuse relates to the Headteacher, it is the responsibility of the Deputy Headteacher or the designated Academy's Child Protection Officer to contact the Chair of Governors.

The application of the inter-agency Child Protection Procedures is separate from any disciplinary action, which may be taken in the event of a member of staff being suspected of child abuse. The Academy's Disciplinary Procedure should be followed

alongside any investigation by the Referral & Assessment Team, except when specifically requested not to do so.

In cases of gross misconduct or child protection cases, if an employee resigns prior to a formal disciplinary hearing, the matter may still be referred to a meeting of the Headteacher and Local Academy Council for a determination of whether a referral will be made to the Disclosure & Barring Service and/or the Teaching Regulation Agency (TRA).

## **10. CRIMINAL OFFENCES**

The Academy will treat seriously any employee who is charged with a criminal offence, although being charged with, or convicted of a criminal offence does not automatically lead to dismissal. It would depend on the offence, its seriousness and the effect on the employee's ability to continue to do the job, or how it might affect the Academy's credibility with the public. Employment law is based on different principles to criminal law which means that the Academy can take disciplinary action before the outcome of a criminal case. An employee found not guilty of a criminal offence will not necessarily be immune from disciplinary action.

Headteachers need to investigate the available facts and decide whether the employee's conduct affects the suitability for, or possibility of, continued employment in the Academy. If so, the normal disciplinary processes should be applied.

In other cases, (e.g. where an employee is in custody or otherwise unable to return to work), disciplinary proceedings can commence before the outcome of the Police investigation is known, provided that a thorough investigation has been carried out with a decision that the employee has a disciplinary case to answer.

## **11. GROSS MISCONDUCT**

Gross Misconduct is defined as misconduct of such a serious nature that the Academy no longer has confidence that the employee is able to carry out their duties with honesty or integrity or that they will perform their duties without causing risk to pupils, other employees or the Trust. In such cases, the employment relationship is irreparably damaged that the Academy is justified in no longer tolerating an employee's continued presence at their place of work. An allegation of gross misconduct may lead to the employee's immediate suspension from work, pending investigation. Where, after due process, the allegations against the employee are substantiated, the employee will be dismissed without notice unless there are any mitigating circumstances.

Examples of gross misconduct relating to all employees are listed below. This list is not exhaustive:

- Acts of discrimination, harassment or verbal abuse against employees, clients or members of the public on grounds of race, colour, creed, ethnic or national origin, disability, age, gender, sexuality or marital status. (*Acts of discrimination and harassment include the production, distribution, display or communication of material* (books, posters, magazines and other publications, cartoons, cards, personalized telegrams, advertisements, calendars, photographs, videos, computer generated imagery) which may give rise to offence on any of these grounds.
- Serious failure to operate or comply with the Academy's Equal Opportunity Policy or Codes of Practice.
- Harassment, bullying and victimisation of any employee



- Persistent and willful refusal to carry out a reasonable management instruction
- Improper disclosure of confidential information
- Unauthorised removal, possession, or theft of property belonging to the Academy, a fellow employee, client or member of the public.
- Acts of violence including the physical assault on, or serious threat against, a fellow employee, client, or member of the Academy or of the public.
- Falsification of qualifications or information in connection with employment or which result in additional remuneration.
- Sexual misconduct at work
- Malicious damage to Academy property
- Falsification of attendance sheets, bonus sheets, subsistence and expense claims etc.
- Conviction for a criminal offence unconnected with the Academy but which removes an employee's acceptability to remain in employment e.g. cashier convicted of theft, a residential childcare officer convicted of sexual abuse of a child, a driver convicted of driving under the influence of drink or drugs.
- Serious breaches of safety rules including deliberate damage to, or misappropriation of safety equipment or endangering others while under the influence of intoxicants.
- Whilst under the influence of intoxicants acting in a manner in circumstances which would bring the Academy into disrepute.
- Holding unauthorised alternative employment that may be deemed a conflict with the Trust, paid and unpaid. Employees are expected to declare any unpaid they hold – including volunteer work
- Acts of fraud against the Academy or other public organisations.
- Serious breaches of the staff code of conduct (including those elements contained in the staff handbook)
- Unauthorised indebtedness to the Academy
- Serious breach of PLT's standing orders, financial regulations, rules or codes of practice including the E-mail and Acceptable Use of the Internet policy.
- Misuse of the ICT to view or distribute obscene, pornographic, defamatory or otherwise unacceptable material.
- Inappropriate physical contact or restraint of a pupil
- Persistent and significant failure to exercise proper control or supervision of pupils
- Failure to report an incident of child protection or adult abuse which has come to your attention
- Actions outside the workplace that could be so serious as to fundamentally breach the trust

and confidence placed in the employee

- Influencing an internal investigation

## **12. OTHER MISCONDUCT**

The great majority of breaches of disciplinary rules will not normally be sufficiently serious to warrant dismissal on the first occasion or without previous warning. Examples of such offences are listed below and relate to all employees. This list is not exhaustive:

- Refusal to obey legitimate management instructions from senior employees/supervisors
- Negligence in the performance of duties
- Bad time keeping including taking excessive meal/smoking or other breaks
- Absenteeism and leaving the workplace without permission
- Misconduct in relationships with other members of staff, clients or members of the public
- Damage to Academy property
- Swearing or abuse of members of staff, clients or members of the public
- Being under the influence of drink or other intoxicants, whilst at work
- Breach of safety rules
- Non-compliance with sickness pay scheme
- Inadequate performance of the type of work which an employee is engaged to undertake
- Unauthorised use of Academy facilities e.g. computers, telephones, photocopiers and vehicles
- Breach of PLT's standing orders, financial regulations, rules or codes of practice including the E-mail and Acceptable Use of the Internet policy.
- Failure to make any required declaration e.g. membership of freemasons or other similar organisation.
- Breaches of the staff code of conduct (including those elements contained in the staff handbook)
- Failure to comply with the Academy's dress code for employees.

Employees who are in any doubt as to the interpretation of these rules, or the Code of Conduct, should refer any question to their line manager.

### **Acceptance of bribes or other corrupt practices**

It will be deemed a disciplinary offence of gross misconduct for an employee in her/his official capacity corruptly, or otherwise, to accept any gift or hospitality, in contravention of PLT's

standing orders, as an inducement or reward for doing or refraining from doing anything, showing favour or disfavour to any person or organisation, including the acceptance of any of the following gifts or hospitality:

- lavish gifts
- holiday or week-end hospitality
- hotel or theatre tickets
- use of company flat or hotel suite
- a meal with any person who is awaiting a decision of the Academy
- invitation as a spectator at a commercial sporting event
- gifts received on a regular basis from the same source
- offers of items or services at trade or discount price, other than a discount offered generally to all or most Trust/ Academy employees or trade union members
- accepting money or other reward for work done, apart from that which the Trust/ Academy pays
- asking for/or accepting gifts/tips/Christmas boxes

Unauthorised access to, use or disclosure of confidential matters including the unauthorised use or disclosure of any computer-held or computer-generated information from which a living individual can be identified.

### 13. DISCIPLINARY PROCEDURE:

#### FORMAL STAGE - INVESTIGATION

In the event of a complaint or report of any incident, which is in breach of the disciplinary rules, an appropriate investigation should be carried out by the Investigating Officer, either the Headteacher (or appropriate manager). This may include certain offences committed outside work where the offence has an impact on the employee's employment in the Academy.

The Academy Council should designate a person to act in the role normally performed by the Headteacher (in the event that disciplinary action against a Headteacher is needed).

Any offence or incident committed whilst at work where this is in breach of the disciplinary rules or legislation should be investigated before disciplinary action is taken. Any allegations of fraud or corruption must be reported to Internal Audit. No action should be taken to investigate these allegations until and unless Internal Audit agree this is appropriate.

The employee under investigation should be invited to attend an investigatory meeting and be given a minimum of 5 days written notice of this. With the consent of all parties this period of notice may be reduced as it is desirable that such meetings should take place as soon as possible.

The employee being investigated has the right to be represented at the investigation meeting, by either a recognised Trade Union representative or a work colleague.

Following conclusion of the investigation the Investigating Officer will need to decide whether there is a case to be answered. Where it is found that there is a case to answer, the disciplinary hearing will commence.

In cases where the facts are explicitly clear, a formal investigation may not be required.

#### **FORMAL STAGE - DISCIPLINARY HEARING *Where a written warning may be issued by the Headteacher***

After exhausting all aspects of the informal stage, or if the Headteacher considers that the matter must move immediately to the formal stage, the formal stages of the procedure should be used.

Where the matter proceeds to a hearing, the Headteacher will write to the employee to confirm:

- the allegation
- date, time, place of hearing
- constitution of disciplinary panel
- all accompanying documents and witnesses to be called
- the employee's right to be represented by a work colleague or trade union

representative

- the disciplinary procedure
- whether the offence may result in dismissal.
- the right of the panel to proceed in the absence of the employee

The employee will be required to provide the Headteacher with all documents they intend to rely upon at the hearing along with the names of any witnesses they intend to call, at least 5 working days before the hearing. Any alternative timescale will be by agreement between the parties.

If during the disciplinary hearing the Headteacher, or appropriate manager/Governor, considers that further evidence may be required, then the hearing may be adjourned for no longer than 10 working days so that evidence can be sought. This must be conveyed to the employee.

If following the hearing (or reconvened hearing) the employee is found not to have committed the misconduct, then no sanction will be given and the case will be dismissed.

Where the misconduct is proven, a formal written warning or lesser sanction can be issued by the Headteacher, following a disciplinary hearing and without recourse to a disciplinary panel hearing.

Where a warning is issued, the employee will be informed of:

- the nature of the misconduct found;
- the penalty;
- the right of appeal and to whom this should be addressed;
- the period that any written warning will remain in force;
- the consequences of any further misconduct (where appropriate).

The written warning must be kept on the employee's personal file for up to 2 years (12 months first warning, 24 months second final warning) and will be disregarded for disciplinary purposes after this time unless the school is required not to do so by statute or regulation, or has good reason following advice from HR.

The employee will be notified in writing as to the outcome of the disciplinary hearing within 5 working days.

### **FORMAL STAGE – *Where sanctions up to dismissal may be issued by panel of Governors***

If a complaint of a more serious nature arises and where following a disciplinary investigation, the Headteacher considers could result in possible dismissal, the matter should move to the disciplinary panel stage. This stage may also be appropriate if the employee already has a warning on file.

Where there is a clear breach of discipline the Headteacher will convene a disciplinary panel of governors to hear the case and instruct the employee giving at least 5 working days' notice, by letter to attend the disciplinary panel hearing. The employee has rights to be accompanied at this stage.

The outcome of the disciplinary hearing might be that there is no evidence of any

breach of discipline by the employee, but in the case that there is a breach, a sanction may be considered from any of the following:

written warning, final written warning, relegation to a lower grade or removal of additional allowances, dismissal (with or without notice), as is deemed appropriate. The severity of the action taken will relate to the gravity of the misconduct, and before reaching a decision, account will need to be taken of all appropriate factors.

In very serious cases, the Headteacher may deem that dismissal may need to be considered. The case against the employee will be presented by the Headteacher at a disciplinary hearing.

In cases where the Headteacher has been directly involved in the events leading to the disciplinary action, or has instigated a proposal to dismiss, or is a witness of a particular conduct giving grounds for the disciplinary action in question, then the Headteacher should nominate a line manager or senior member of staff as appropriate to carry out the investigation. Where the Headteacher is the subject of this procedure then the Chair of Governors or other designated Governor should initiate disciplinary action. Where appropriate, the case will be heard by the Disciplinary Panel of the Governing Body. Advice and support should be sought from the Trust's HR Consultant.

Details of disciplinary proceedings and outcomes should remain confidential and restricted to those who need to be involved.

#### **14. PREPARING FOR A FORMAL HEARING - SCOPE OF THE DISCIPLINARY PANEL**

A disciplinary hearing will be held before any formal disciplinary sanction is given against an employee. The case will be presented by the investigating officer or by the Headteacher. A disciplinary panel, which should consist of 3 Governors who have no prior knowledge of the case, one of which should be the Vice-Chair or Chair of Governors if possible. No member of the panel should act as witnesses in the case or have been involved in the investigation. The Trust's HR Consultant must be notified in good time to allow her/him to arrange for a representative to attend the disciplinary hearing, for the purpose of giving advice.

The Headteacher or line manager will instruct the employee by letter to attend the disciplinary hearing. This letter should contain details of:

- the allegation
- date, time, place of hearing
- constitution of disciplinary panel
- all accompanying documents and witnesses to be called
- the employee's right to be represented by a work colleague or trade union representative
- the disciplinary procedure
- whether the offence may result in dismissal.
- the right of the panel to proceed in the absence of the employee

A minimum of 5 working days' notice should be provided to the employee in relation to a formal disciplinary hearing considering allegations of misconduct and 10 working days' notice should be provided in relation to a formal disciplinary hearing considering allegations of gross misconduct.

The employee will be required to provide a nominated representative of the school with all documents he/she intends to rely upon at the hearing along with the names of any witnesses they intend to call, at least 10 working days before a panel hearing. The panel can decide not to accept late documentation or witnesses which have not been notified in advance. Any alternative timescale will be by agreement between the parties.

It is the employee's responsibility to inform their witnesses of the date, time and place when they will be required to give evidence, and for the witnesses to obtain consent to attend.

The employee can be represented (by a trade union representative or work colleague) at all formal stages of the disciplinary process, and any appeal.

## **15. PROCEDURE AT THE PANEL HEARING**

The Chair of the formal disciplinary hearing will arrange for notes of the hearing to be taken and retained for future reference. The order of business at a disciplinary hearing will normally be:

- (a) The Chair of the panel will introduce all parties, state the purpose of the hearing, summarise the order of the proceedings and answer any questions regarding the procedure.
- (b) The management representative will state their case and call their witnesses to give evidence.
- (c) The employee (or their representative) will have the opportunity to question the management representative and the management witnesses.
- (d) The panel will have the opportunity to question the management representative and the management witnesses.
- (e) The employee (or their representative) will state their case and call the employee's witnesses to give evidence.
- (f) The management representative will have the opportunity to question the employee, the employee's representative and the employee's witnesses.
- (g) The panel will have the opportunity to question the employee, the employee's representative and the employee's witnesses.
- (h) The management representative will be invited to summarise their case.
- (i) The employee (or their representative) will be invited to summarise their case.

- (j) The panel will deliberate in private and report their decision to the parties at the hearing, a reconvened hearing, or in writing direct to the employee within 5 working days.

Having reached a decision on the facts of the case and before deciding on the appropriate sanction, if any, the panel will consider any written statement of unexpired disciplinary penalties, which will have been provided to the employee at the time of the original notification of the hearing and any arguments in mitigation presented by the employee and/or his/her representative.

A decision to dismiss should not be based on an expired warning, but the fact that there is an expired warning may explain why a lesser sanction is not substituted.

## **ADJOURNMENT**

If an adjournment is called during any stage of the hearing, both the management side and employee's side should be requested to leave the room for the purpose. If any new facts emerge which require further investigation, the Chair may decide to adjourn the hearing and reconvene when the investigation is completed.

## **16. NON-AVAILABILITY OR NON-ATTENDANCE**

Employees and their representatives should make themselves available to attend meetings within a reasonable period of time. If, however, the employee's chosen companion is not available at the time proposed for any meeting or hearing, an alternative date will be agreed, on the first occasion, no less than five working days from the original date.

Where an employee is unable to attend a meeting or hearing, the reasons for non-attendance will be investigated, and the meeting/hearing rescheduled once.

### **Non-Availability of Trade Union Representative/ Witnesses**

A trade union representative who cannot attend a hearing because of illness or other unforeseen circumstances should notify the Academy representative at the earliest opportunity and give full reasons. The hearing will usually be rearranged. However, if no reason is received or the trade union representative fails to attend a second time then the hearing will proceed in their absence. The reason for non-attendance will be recorded.

Where witnesses are not available consideration must be given to the submission of written evidence.

## **17. DISCIPLINARY ACTION AGAINST A TRADE UNION REPRESENTATIVE**

No disciplinary action will be taken against a trade union representative beyond an informal warning until a full-time official (e.g. a full-time Branch Official or, where not available, a District or Regional Official) has been given the opportunity to discuss the circumstances of the case.

## **18. GRIEVANCES RAISED DURING THE DISCIPLINARY PROCESS**

If an employee raises a grievance during the course of the disciplinary process related to the case, the grievance will normally be dealt with as part of the formal disciplinary process. If appropriate, given the nature of the grievance, the disciplinary process may



be temporarily suspended in order to deal with the grievance.

## **19. ILL HEALTH DURING THE DISCIPLINARY PROCESS**

It is recognised that the disciplinary process can be distressing and may sometimes lead to an employee feeling unwell. The Trust believes that in these circumstances, it is often in everyone's best interests to conclude matters as quickly as possible and will work with the employee to achieve this. Where necessary, advice will be sought from an occupational health adviser.

## **20. THE PANEL'S DELIBERATION AND DECISION**

The Governing Body of the Parallel Learning Trust (PLT) can make the decision to dismiss and to ratify a dismissal decision.

In the event of a finding sufficient to warrant disciplinary sanction:

- where the finding is of gross misconduct, the normal outcome will be dismissal, except where there is sufficient mitigation. Penalties available to the panel include a final written warning, demotion and recommendation to dismiss with or without notice.
- where the finding is of other misconduct it is usual to give the employee a written warning. A further act of misconduct within a set period would normally result in a final written warning. If the employee's first misconduct is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the Academy. In the absence of any live disciplinary sanction, dismissal would not normally be appropriate where the finding is of other misconduct. However, the penalties available to the panel include a written warning a final written warning and dismissal.

## **21. GIVING THE DECISION**

Having considered the evidence and come to a conclusion, the Chair of the panel will advise of their decision and arrange for the decision to be confirmed in writing to the employee. Where misconduct has been found proven, the notification will include:

- the nature of the misconduct found;
- the penalty;
- the right of appeal and to whom this should be addressed;
- the period that any written warning will remain in force;
- the consequences of any further misconduct (where appropriate).

Where the penalty is a written warning, the decision must include how long the warning will remain in force for, determining penalty in any future disciplinary action, and, if appropriate, the likely consequences of any further misconduct.

The decision should be confirmed in writing within 5 working days of the hearing. Disciplinary decisions relating to trade union representatives need to be confirmed in

writing also to the branch secretary or full time official.

The sanctions available to a disciplinary panel are:

- written warning (effective for up to 12 months);
- final written warning (effective for up to 24 months);
- relegation to a lower grade (or removal of additional allowances) as an alternative to dismissal (on the understanding that dismissal will follow if the relegation is not accepted);
- dismissal with notice (or payment in lieu of notice);
- summary or immediate dismissal (following a disciplinary hearing) without notice.
- where the potential dismissal is for some other substantial reason – see **Appendix 1**

Dismissals and notice periods are effective from the date of the dismissal decision.

Following any dismissal determination, notification of the termination of the contract will be issued by the Academy. If a subsequent appeal reverses the dismissal decision the termination notice will be rescinded.

## **22. PROCESS FOR APPEALS**

### **APPEALS**

Employees may appeal against all disciplinary sanctions taken at a formal hearing and may appeal a written warning given at a disciplinary interview.

The employee must appeal in writing, giving clear and specific grounds for the appeal to the Chair of the Appeals Committee within 5 working days of being advised in writing of the decision of the disciplinary hearing. If grounds for appeal are not stated, no right of appeal will be allowed.

On receipt of a valid notice of appeal, the Chair of the Appeals Committee will arrange for a copy of the notes of the disciplinary interview/hearing to be sent to the employee.

The Appeals hearing will, where possible, be arranged within 20 working days of receiving a letter of appeal. It is recommended that governors arrange dates and composition of the appeals panel at the outset of any disciplinary hearing.

The employee will be given 5 working days' notice of the appeal hearing.

### **GROUND FOR APPEAL**

The appeal process will consider disciplinary decisions on one or more of the following grounds.

- The procedure: Was the procedure followed and did any failure to follow it materially affect the decision
- The decision: Were the conclusions of the Panel unreasonable

- The penalty: Is the penalty considered too harsh taking into account the misconduct, the mitigating circumstances or the employee's previous service
- Relevant new evidence

**Note 1.** The appeals panel can disregard any new evidence if they decide it is unreasonable for it to be raised for the first time at the Appeal.

**Note 2.** The appeal hearing will not constitute a full rehearing of the case. It will address the specific grounds of appeal set out in the notice of Appeal.

## **COMPOSITION OF THE APPEAL PANEL**

The appeals panel will comprise an independent panel of three Governors including the Chair or Vice-Chair if possible. No member of the panel should have been involved in the formal disciplinary hearing or have any prior knowledge of the details of the case.

The Chair of the appeals panel on receipt of an appeal will arrange for an appeal date which is, as far as possible, timely and suitable to all parties concerned. The parties will be advised in writing of the date, time and venue and the employee informed of his/her right to be represented.

The Chair of the appeals panel should arrange for notes of the interview/hearing to be taken and retained for future reference.

## **POWERS OF APPEAL PANEL**

The appeals panel can confirm the disciplinary decision, impose a lesser penalty or overturn the disciplinary panel's decision.

It is the duty of an appeals panel to overturn a previous decision if it becomes apparent that this was not soundly based and this action should not be regarded as undermining authority.

In cases where the decision of Governors is to reinstate the employee following appeal, the effective date of reinstatement will be from the initial dismissal date.

In giving reasons for its decision, an appeals panel, upholding an original decision, needs only to give reasons why the appeal failed, addressing each of the specific grounds of appeal. If it reaches a different decision or awards a different penalty the Panel should explain the reasons why.

## **TIME LIMIT FOR SUBMISSION OF APPEAL DOCUMENTS**

All papers presented to the original hearing and notes of the hearing together with the decision of the Headteacher or disciplinary panel and any subsequent correspondence, must be available to the appeals panel. Any new evidence which the employee or management wishes to introduce should be copied to all parties at least 3 working days in advance of the meeting of the appeal panel.

## **PROCEDURE FOR THE APPEAL HEARING**

The order of business for the appeal hearing will normally be as follows:

- (a) The Chair of the panel will introduce all parties, state the purpose of the appeal hearing, summarise the order of the proceedings and answer any questions regarding the procedure.
- (b) The appellant, their trade union representative or work colleague may present their case based on the grounds specified when submitting the appeal. The appellant can refer to documentation and call any witnesses necessary in connection with the grounds for appeal.
- (c) The management representative may ask questions of the appellant and any witnesses (including any questions on the documentation presented).
- (d) The appeals panel may ask questions of the appellant and any witnesses (including any questions on the documentation presented).
- (e) The management representative will then respond to the appellant's presentation, call witnesses as necessary in connection with the grounds for appeal and use any relevant documents.
- (f) The appellant and/or their representative may ask questions of management and any witnesses (including any questions on the documentation presented).
- (g) The appeals panel may ask questions of management and any witnesses (including any questions on the documentation presented).
- (h) The appellant and/or their representative may summarise their appeal case.
- (i) The management representative may summarise their appeal case.
- (j) The parties to the case will be asked by the Chair to withdraw.
- (k) The appeals panel will deliberate in private and come to a decision.
- (l) The Chair of the panel will formally communicate the panel's decision in writing. The Appeal Panel's decision is final.

## **23. SUBSEQUENT ACTION**

Once the specified period has elapsed, time expired sanctions should be removed from the personnel file and should be disregarded when a penalty is determined on any subsequent disciplinary action, unless the school is required not to do so by statute or regulation (e.g. safeguarding), or has good reason following advice from HR.

If any further misconduct of a similar nature is found to have occurred after a warning has expired, it may be permissible to take this into account at a future disciplinary hearing when considering the overall employment of that employee.

# Appendix 1

## **Dismissal for some other substantial reason:**

Some dismissals do not fall into the specific categories of misconduct or gross misconduct and are termed under the Employment Rights Act 1996 as for “some other substantial reason” (SOSR) dismissals.

An employer is required to show that the substantial reason is a potentially fair one. Any employment tribunal must then decide whether the employer acted reasonably in dismissing for that reason. As in all unfair dismissal claims, an employment tribunal will take into account whether the employee was consulted, given a hearing and appeal rights, and whether dismissal was a reasonable response in the circumstances.

A potentially fair dismissal under SOSR can be made for a variety of reasons, for example:

- Where an employee has confirmed that they are not prepared to accept a change in working practises/contractual terms following a reorganisation
- Where there is a serious breakdown in relationship which causes a breach of trust and confidence between the employee and the school
- Where an employee has a sentence of imprisonment imposed upon them which falls outside the normal disciplinary procedure
- Where an overseas trained unqualified teacher has failed to secure qualified teacher status within the prescribed time limits
- Where a qualified teacher has been appointed, in accordance with statute, to replace an unqualified teacher

This list of reasons is not intended in any way to be exhaustive or prescriptive. Each instance must be assessed on an individual basis within the context of the nature of the job and any other relevant circumstances.

A potential dismissal under SOSR will follow the disciplinary process and if there is a dismissal it would be with appropriate notice of termination of services.