



Disciplinary Procedure

Approved by Trust Board on 01 February 2018
Applicable from 12 February 2018

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Disciplinary Procedure

1.0 Purpose

1.1 This procedure is designed to help and encourage all employees of the Co-op Academies Trust (the “Trust”) to achieve and maintain high levels of conduct and to ensure fairness, equity and consistency in the management of employee conduct.

1.2 This procedure has been drawn up to comply with the ACAS Code of Practice which sets out the principles for handling disciplinary situations in the workplace, and complies with relevant legislation. In the event of questions arising regarding the application of this procedure, the ACAS Code of Practice and ACAS Guide may be referred to.

2.0 Applicability

2.1 This procedure applies to all employees within the Trust, whether permanent or on a temporary/fixed term contract. It does not apply to agency workers, contractors or volunteers.

2.2 Separate procedures exist for dealing with matters that arise not caused by wilful misconduct, for example the Capability Procedure or absence management policies. The Trust’s policy “Allegation of abuse against staff” should also be referred to in relevant cases.

3.0 Roles and responsibilities

3.1 Headteachers / Principals, Senior Leaders, and the Education Directors / Director of the Trust (or the person to whom they have delegated responsibility) are responsible for managing the conduct of employees in accordance with this procedure. They must ensure that employees are aware of the expected levels of conduct as set out in the Staff Code of Conduct, other Trust policies, and any local rules or regulations specific to their job or work area.

3.2 Where concerns regarding conduct arise, line managers should seek advice from HR at an early stage.

3.3 Employees are responsible for adhering to the expected levels of conduct as set out in the Staff Code of Conduct, other Trust policies, and any local rules or regulations specific to their job or work area, including any reasonable management instructions.

4.0 Principles

4.1 Misconduct is conduct that falls below the expected level; which may involve an employee breaking specific rules about behaviour or conduct. There may be occasions when negligence or failure to act amounts to misconduct or gross misconduct. Gross misconduct is very serious misconduct that may lead to dismissal without notice or pay in lieu of notice (summary dismissal).

4.2 All employees are expected to observe the levels of conduct, behaviour, attendance and other rules that have been established for the well-being and safety of all and the efficient running of the Trust and its academies.

4.3 It is expected that minor misconduct will be resolved informally through effective management practice by way of advice and discussion. A note of the discussion may be confirmed in writing (e.g. by email) see section 5. However, where this approach has been tried and has not worked, or where the misconduct is more serious, formal disciplinary action will be considered.

4.4 Allegations of misconduct will be investigated before any disciplinary action is taken to establish the facts of the situation.

4.5 The employee will be advised of the allegations of misconduct and will be given the opportunity to state their case and present relevant evidence at a disciplinary hearing before any decision is made.

4.6 All employees will have the right of appeal against any formal disciplinary sanction.

4.7 At all stages of the formal process the employee will have the right to be accompanied by a trade union representative or work colleague. The companion should be allowed to address the meeting in order to:

- put forward the employee's case
- sum up the employee's case
- respond on the employee's behalf to any view expressed at the hearing
- confer with the employee during the meeting.

The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it, or prevent the employer from explaining their case.

4.8 Employees will not generally be dismissed for a first incident of misconduct except in the case of gross misconduct.

4.9 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.

4.10 Information relating to formal proceedings will be kept confidential where appropriate. Confidentiality should be maintained during all stages and throughout the Disciplinary Procedure.

4.11 The Trust will comply with requirements to refer relevant formal disciplinary action taken under this procedure to relevant services or professional bodies. For example if an allegation is connected to the risk of harm, or actual harm to a child then the Disclosure & Barring Service (DBS) and Teaching Regulation Agency will be informed if the allegation involves a teacher.

4.12 The timescales within this procedure may be amended by mutual consent.

4.13 If an employee resigns where an investigation or formal proceedings are being considered or have commenced, the proceedings should be completed in the case of matters which may need to be referred on (e.g. fraud or safeguarding), and it may be appropriate to continue to an appropriate conclusion at the discretion of management in other instances..

4.14 Where an employee raises a grievance during the disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

5.0 Dealing with misconduct informally

5.1 Managers should monitor and evaluate conduct, behaviour and attendance of all their employees through normal day to day management. Where minor concerns occur these should be raised with the employee on an individual basis to try to restore and maintain a satisfactory level, addressing the following points:

- Set the level – the manager should bring to the attention of the employee how they are failing to meet the required level of conduct and of the concerns that exist;

- Seek an explanation - to provide the employee with an opportunity to explain why they are not meeting the required level of conduct and to discuss the acceptability of the explanation(s);
- Require improvement - to advise the employee what they are expected to do to bring about improvements in conduct or behaviour. Outline any management action and support and give a time limit within which the employee can reasonably be expected to modify or change their behaviour;
- Warn of the consequences - of failure to improve, to meet and sustain the level of behaviour, attendance or conduct required, such as formal action under the disciplinary procedure.

5.2 The main points discussed should be noted and a copy provided to the employee; for example, this could be in a “management note of guidance” via email or a memo. A copy of the note must not be placed on the employee’s file at the informal stage.

Formal Process

6.0 Informing the employee of the allegations

6.1 In cases of alleged misconduct the employee will be notified in writing of the allegations and that an investigation under the disciplinary procedure will occur and of the right to be accompanied. This should happen without undue delay, however, in some circumstances it may be necessary to carry out initial investigations to establish the facts of the case prior to writing to the employee.

6.2 The notification will inform the employee of who has been appointed as investigating officer. Different people will carry out the investigation and the disciplinary hearing.

6.3 Where disciplinary action is being considered against an employee who is a trade union representative this disciplinary procedure should be applied. Human Resources should be informed and, the matter will be discussed at an early stage (and before taking any formal action) with an official employed by the relevant trade union.

7.0 Investigation

7.1 No disciplinary action will be taken against an employee until a reasonable investigation to establish the facts of the case has taken place. The purpose of the investigation is to establish the facts whilst they are still clear in the minds of those involved, and to decide what further action to take.

7.2 The investigation should be carried out promptly and without unnecessary delay.

7.3 Where reasonable the investigation should be completed within 25 working days. However, if the investigation is not completed within this period then the employee will be informed of this, providing the reasons for delay, and given regular information as to how the investigation is progressing.

7.4 It is the role of the investigating officer to determine whether or not there is a case to answer (i.e. whether or not the matter should progress to a hearing) and whether or not the matter could, based on the evidence collected, be considered as potential gross misconduct. It is not their role to suggest what the outcome of the hearing should be.

7.5 If at the end of the investigation, it is found that there is no case to answer, the employee will be informed of this in writing and no reference to the investigation will be kept on the employee’s file.

8.0 Suspension

8.1 Suspension is a response available to remove an employee from the workplace in order to investigate the circumstances relating to any alleged misconduct, but should be used with caution. Suspension should be a last resort, not automatic, and all other alternative options should be considered (and a note of these considerations kept). If possible, a decision should not be made until advice has been taken from a Trust HR Manager or Education Director.

8.2 Whilst a decision on suspension is being taken, a colleague may be asked to go home and not attend work, or be temporarily redeployed, for a maximum of 48 hours.

8.3 Section 12 sets out with whom the authority to suspend rests with depending on who is involved. Suspension is on full contractual pay and should be for as short a period as possible. It must be confirmed in writing to the employee, giving clear reasons for the suspension and its expected duration. The period of suspension should be kept under review, and should be lifted as soon as circumstances permit. The colleague should be kept informed of when they may return.

8.4 An employee may be suspended where one or more of the following apply:

- an allegation of potential gross misconduct is being investigated
- an allegation of misconduct is being investigated where there is a danger that the alleged misconduct may be committed again
- the investigation into an allegation of misconduct could be compromised by the continuing presence of the employee at work (for example because they may destroy evidence or attempt to influence witnesses)
- there is a potential threat to the work of the Trust and its academies, or to pupils/students, to other employees, or to other stakeholders.

8.5 Before a suspension is made it needs to be ensured that the following has taken place/been considered:

- where an allegation of gross misconduct has been made suspension should not be automatic; a preliminary investigation (no longer than two working days) should be carried out to determine whether there is enough evidence that the allegation is potentially gross misconduct. This should include talking to the colleague to establish their version of events. During this time the employee may be asked not to attend work or be temporarily redeployed.
- Following the preliminary investigation, if it is considered necessary to remove the colleague from their usual role for a longer period, the possibility of placing the employee in another work area within the academy, or within a different part of the Trust, whilst the investigation is carried out should be considered as an alternative to suspension.

8.6 Suspension does not imply wrongdoing and does not prejudice the outcome of the disciplinary investigation or hearing. Suspension does not constitute a disciplinary sanction.

8.7 Suspended employees must make themselves available for interviews under the procedure and must not take alternative employment while the contract of employment still applies. They must make themselves available for other meetings which may be required in the course of their employment, and notify the school of the intention to take holidays – in the same way they would do if attending work.

8.8 If appropriate, employees may be asked to return property belonging to the Trust / academy (e.g. keys, IT equipment), and/or have access to online systems suspended, and/or be asked to refrain from visiting Trust premises unless this is unavoidable (e.g. they have children who attend the academy). They should be advised not to discuss the case with other employees whilst the investigation is undertaken, but social contact with colleagues and friends should not be prevented unless there is evidence to suggest that such contact is likely to be prejudicial to the gathering and presentation of evidence.

8.9 Effective support should be provided for the suspended employee, for example sign-posting to Employee Support helpline, advising to contact their trade union representative if they have one, providing a named contact at the academy who can keep them up-to-date with general school information.

8.10 If, on completion of the investigation, the investigating officer believes it to be appropriate, having regard to the above provisions, the period of suspension on contractual pay may continue until a disciplinary hearing has been held and a decision communicated to the employee.

8.11 When returning to work following a period of suspension, appropriate support should be given to help the colleague reintegrate back in to their role.

9.0 The Disciplinary Hearing

9.1 Following the investigation if it is considered that there is a case to answer then a disciplinary hearing will be convened. The hearing will decide what, if any, action should be taken in respect of the alleged misconduct. Further details on who should hear the disciplinary are given in section 12, and further details of the process for the hearing at annex 2.

9.2 The employee will be given 10 working days' notice in writing of a disciplinary hearing. The chair of the hearing will write to the employee to confirm:

- the allegations against them
- the date, time and location of the hearing
- the name of the person (or panel) chairing the hearing
- the right to be accompanied and/or represented by a trade union representative or work colleague
- the requirement to provide the chair hearing the case with a copy of the documents that he/she will be relying upon and the names of any witnesses that they will be calling at the hearing at least 5 working days before the hearing

9.2 Copies of documents that the investigating officer and line managers and/or the Trust will refer to at the hearing, and names of any witness that they will call will be included with the notification. The notification should contain sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer a case at a disciplinary hearing.

9.3 The employee will be informed if the outcome of the hearing could be dismissal (normally where the allegation is of gross misconduct, or the employee is subject to a final written warning that had not expired at the time of the alleged misconduct).

9.4 At the hearing both the investigating officer/Trust and the employee and their trade union representative will be given the opportunity to state their case, call witnesses and ask questions. HR will attend the hearing to provide procedural advice. An order of proceedings is given at annex 2.

9.5 The hearing will normally be adjourned whilst the chair/panel hearing the case reaches a decision. The basis of the decision should be whether on the balance of probabilities the employee committed the alleged misconduct based on the evidence presented from both sides, and if so what if any disciplinary sanction should be given. The disciplinary sanction will depend on the seriousness of the misconduct, any current warnings and/or relevant mitigating circumstances (see section 10).

9.6 The employee will be notified in writing of the outcome within 5 working days and of their right of appeal. Where an employee is dismissed they should be dismissed with appropriate notice, unless the allegations amount to gross misconduct.

9.7 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. Where a hearing is

rearranged and the employee is unable to attend a second time the hearing will convene, as arranged, and a decision taken in the employee's absence based on the evidence available.

10.0 Disciplinary Sanctions

10.1 It may be that the outcome is that there is no case to answer, in which case the employee should be given a letter to inform them that the matter is closed.

10.2 Where an employee is found to have committed misconduct the disciplinary hearing may decide on one of the following sanctions:

- Issuing a management instruction (“verbal warning”) – it is possible that the panel may determine that the misconduct is not sufficiently serious to warrant a higher level of disciplinary sanction or the circumstances of the case may be such that the panel accepts the mitigation provided and considers a lower level of disciplinary sanction is justified.
- First written warning – where misconduct has occurred
- Final written warning – where sufficiently serious misconduct has occurred or where there is continued repetition of an offence despite a previous warning.
- Dismissal – where an employee has still not reached the level required or where there are continued breaches of conduct despite previous warnings or when gross misconduct has occurred.

10.2 Action short of dismissal may be considered as an alternative to dismissal – for example, a final written warning and disciplinary demotion to a lower pay grade and/or transfer to an alternative role within the academy or wider Trust, subject to a suitable role being available and the individual circumstances of the case. There would be no pay protection. It should be noted that there is no entitlement to this outcome.

10.3 A first or final written warning should set out the nature of the misconduct and the improvement that is required. The employee should be told how long the warning will remain current. The employee should be informed that failure to improve, or further misconduct within the specified timescale could lead to more serious formal action being taken, including dismissal or some other contractual penalty such as demotion.

10.4 Warnings will be disregarded for disciplinary purposes after 6 months in the case of a management instruction, 12 months for a first written warning and 18 months for a final written warning, unless otherwise stated. If during this period similar offences or further misconduct occurs, then any ‘live’ warnings will be taken into account. Once spent, the disciplinary warning will remain on the file as part of the employee's overall record of employment but would not be taken into account.

10.5 A decision to dismiss should only be taken by persons who have the authority to do so (see section 12). The employee should be informed of the reasons for the dismissal, the appropriate period of notice, the date on which the employment contract will end, and the right of appeal. Unless an employee is being dismissed for reasons of gross misconduct, they should receive the appropriate period of notice or pay in lieu of notice.

11.0 Appeals

11.1. An employee is entitled to appeal against the formal decision taken by the disciplinary hearing.

11.2 The appeal should be on the basis of one of the following grounds:

- the procedure - a failure to follow procedure had a material effect on the decision
- the decision - the evidence did not support the conclusion reached

- the penalty - was too severe given the circumstances of the case
- new evidence - which has genuinely come to light since the first hearing.

11.3 The appeal must be made in writing, addressed to the Chair of the disciplinary hearing, stating the specific grounds for the appeal, within 5 working days of being advised in writing of the decision of the hearing.

11.4 The appeal will be heard as soon as possible and not normally later than 6 weeks after being received.

11.5 Appeal hearings will not be a re-run of the first hearing. Instead the Appeal Panel will consider the following as appropriate to the case:

- the properness of the procedure leading up to the original hearing
- the composition of the original panel
- the conduct of the original hearing
- any new evidence provided
- appropriateness of the initial disciplinary sanction

11.6 The employee will be given 10 working days' notice, in writing, of the date of the appeal hearing. This notification will give the name of the person chairing the hearing, and the names of panel members. Further details on the composition of the appeal panel is given in section 12. It will remind the employee of their right to be accompanied at the hearing by either a trade union representative or work colleague. HR will attend the hearing to provide procedural advice.

11.7 Both parties must indicate at least 5 working days in advance of the appeal hearing which, if any, witnesses they wish to call and provide copies of any documentation that will be relied upon at the hearing. In exceptional circumstances an alternative time-scale may be agreed.

11.8 The chair of the disciplinary hearing will attend the appeal.

11.9 Details of the process for the appeal hearing is given at annex 2. The employee will be able to present evidence that is directly relevant to the grounds of the appeal. The Chair of the disciplinary hearing / representatives of the Trust if relevant will have the opportunity to respond. The appeal hearing may be adjourned if necessary.

11.10 The appeal hearing may confirm or overturn the decision or may recommend some alternative action.

11.11 The employee will be informed of the appeal decision in writing, within 5 working days of the hearing being concluded. The decision of the appeal hearing is final.

11.12 In cases where an appeal against a dismissal is upheld and a decision is made to reinstate/re-engage, the employee shall suffer no loss under their previous contract of employment from the date of the dismissal up to the date of re-employment.

12.0 Authority to act under the procedure

These levels of authority are in line with the Trust’s Scheme of Delegation.

It is expected that those acting at each level of the procedure will not have previously been involved.

	Suspend the employee, and end the suspension	Investigate the allegations	Hear the disciplinary	Hear the appeal
All academy based employees except those listed below	Headteacher / Principal <i>Chair of Governors and Education Director / Director of the Trust should be informed</i>	Person nominated by Headteacher / Principal (or Headteacher / Principal themselves in some cases)	Where dismissal is <u>not</u> a possible outcome: Headteacher / Principal (where responsibility has been delegated by Chair), or panel of three from the Local Governing Body (LGB). <i>Whilst Heads/Principals have the authority to hear a disciplinary alone (if this has been delegated by the LGB) they may decide to form a panel of themselves and two members of the LGB</i> Where dismissal is a possible outcome: panel of three from the LGB	Panel of three from the LGB
Headteacher / Principal	Chair of Governors and/or Education Director <i>Education Director / Director of the Trust should be informed and must be involved in decision to end suspension</i>	Appointed by Director of the Trust (may be a member of the LGB, or other nominated person)	Where dismissal is <u>not</u> a possible outcome: Chair of Governors and/or Education Director and/or Director of the Trust, or panel of three from the LGB and/or other senior colleagues appointed by the Director of the Trust Where dismissal is a possible outcome: panel of three which should include at least one member of the Trust Board	Appeal against action short of dismissal: panel of three (may include members of LGB, the Trust Board, and/or Director of the Trust). Appeal against dismissal: panel of three from the Trust Board

All central team employees except Director of the Trust	Director of the Trust	Independent person appointed by the Director of the Trust	Where dismissal is <u>not</u> a possible outcome: Director of the Trust Where dismissal is a possible outcome: panel of three, including at least one member of the Trust Board	Panel of three from Trust Board
Director of the Trust	Chair of the Trust Board (or nominated delegate)	Independent person appointed by the Chair of the Trust Board	Where dismissal is <u>not</u> a possible outcome: member of the Trust Board appointed by Chair Where dismissal is a possible outcome: panel of three from the Trust Board	Panel of three from the Trust Board

13.0 Records

13.1 Records of disciplinary hearings and disciplinary appeal hearings will be kept detailing:

- the nature of any allegations
- the employee's defence or mitigation
- the action taken and the reasons for it
- whether an appeal was lodged and its outcome
- any subsequent developments.

13.2 These records will be kept confidential and retained in accordance with the Data Protection Act and Freedom of Information Act, which require the release of certain data to individuals on their request.

13.3 Records will be disregarded for disciplinary purposes after a set period of time depending on the level of penalty given (see 10.3), and will be retained for six years after employment ceases, after which time they must be destroyed as confidential waste.

14.0 Criminal Conduct

14.1 Employees are required to inform the Headteacher/Principal or Director of the Trust in the event of being cautioned or arrested on suspicion of a criminal offence whether the offence is committed during the course of employment or outside employment. Failure to comply with this requirement may be regarded as gross misconduct and may lead to summary dismissal.

14.2 Advice should be sought from Human Resources, and action taken in light of the particular circumstances of a case, and with reference to the ACAS guide on discipline and grievances at work.

15.0 Review

15.1 This procedure will be reviewed to respond to any changes in the employment legislation, and at least every three years.

Management Guidance: examples of misconduct and gross misconduct

Misconduct

This is a breach of discipline which on its own is not sufficiently serious to warrant dismissal, but will warrant action being taken under this procedure. In cases where misconduct takes place and live warnings for this or another type of misconduct are still in force, then unless mitigating circumstances are proven, the employee may be dismissed without notice.

Examples of misconduct are listed below. This list is not intended to be exclusive or exhaustive and there may be other incidents of misconduct of a similar gravity:

- Poor timekeeping including unauthorised absence
- Failure to observe reasonable instructions
- Failure in duty of care towards pupils/students or colleagues
- Failure in protecting the health, safety and wellbeing of pupils/students and colleagues
- Minor instances of neglect of duties and responsibilities
- Inappropriate behaviour which impacts negatively on the running of the academy, e.g. wilful failure to work in harmony with colleagues
- Deliberate breaches of the Trust's or academy's policies and procedures
- Misuse of the Trust's facilities (e.g. telephone and the internet)
- Failure to adhere to the requirements of the Trust's Staff Code of Conduct
- Conduct inconsistent with an employee's contract and/or conditions of service

Gross Misconduct

This is a grave breach of discipline which may be serious enough to destroy the employment contract between the Trust and the employee making any further working relationship and trust impossible.

Gross misconduct would normally lead to dismissal or a final written warning, even first incidents of gross misconduct. The list is not intended to be exhaustive and there may be other incidents of gross misconduct of a similar gravity which could result in dismissal.

- Theft, fraud or deliberate falsification of records
- Serious breaches of the Trust's Staff Code of Conduct & other Professional Codes of Conduct
- Refusal to register with mandatory professional bodies (including persistent failure)
- Failure in duty of care to protect pupils / students by placing them at significant risk
- Physical violence or bullying
- Unlawful discrimination or harassment
- Serious and deliberate damage to property
- Serious insubordination
- Serious incapability during working hours brought on by alcohol or illegal drugs
- Serious abuse of the Trust's Electronic Communications Policy (e.g. in relation to accessing pornographic internet sites or sending and receiving offensive or obscene material)
- Serious misuse of school's facilities, property or name
- Bringing the Trust or its academies in to disrepute
- Causing loss damage or injury through serious negligence
- Serious breaches of health and safety rules
- Serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998)
- Serious sexual misconduct

Order of proceedings for Disciplinary Hearing or Appeal

Introduction

- Introduce those present, and explain why they are there. Someone who is not involved in the case should be appointed to take notes on the proceedings and Human Resources may be present throughout the hearing.
- Explain the purpose of the meeting i.e. to establish as fully as possible the facts of the case, and to consider whether disciplinary action should be taken in accordance with the Trust's disciplinary procedure.
- Explain how the meeting will be conducted

Statement of the complaint

- State precisely what the complaint is and outline the case by going through the evidence that has been gathered.
- Ensure that the employee and his/her companion are allowed to see any statements made by witnesses and to raise questions.

Employee's reply

- Give the employee the opportunity to state their case and answer any allegations that have been made. They should be able to ask questions, present evidence and call witnesses. The employee and their companion should be given the opportunity to confer privately.

General questioning and discussion

- The person/panel hearing the disciplinary should:
 - Use this stage to establish all the facts
 - Ask the employee if they have any explanation for the alleged misconduct, or if there are any special circumstances to be taken into account
 - Keep the approach formal and polite, and encourage the employee to speak freely; it should be a two-way process.
 - Use questions to clarify the issues and check that what has been said is understood.
- If new facts emerge, it may be necessary to adjourn the hearing to investigate.
- If the employee is prepared to accept that they may have done something wrong, agree the steps which should be taken to remedy the situation. If it becomes clear that the employee has provided an adequate explanation, or there is no real evidence to support the allegation, bring the proceedings to a close.

Summing up

- Summarise the main points of the discussion after questioning is completed, to remind all parties of the nature of the allegation, the arguments and evidence put forward, and to ensure nothing is missed.
- Ask the employee if they have anything further to say.

Adjournment before decision

- Adjourn before a decision is taken about whether a disciplinary penalty is appropriate, to allow reflection and proper consideration. It also allows for further checking of any matters raised, particularly if there is a dispute over facts.

Giving the decision

- Unless a mutual agreement has been reached otherwise, the meeting will be reconvened and the employee be informed of the outcome of the hearing.
- The decision will be communicated in writing within 5 working days.