

Disciplinary (Misconduct) Policy



Believe, Succeed, Together

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1.0 Introduction

Employees need to be aware of the standards required of them [Code of Conduct Policy](#) and the possible consequences of any failure to adhere to these standards.

2.0 Misconduct

Examples of misconduct, where a form of warning may be issued, or where cumulative or repeated acts could lead to dismissal, are as follows:

- Continuing failure to comply with attendance and time-keeping requirements.
- Continuing failure to follow procedures for booking and returning from leave.
- Absenteeism and unauthorised absence from the workplace.
- Refusal or failure to follow a legitimate management instruction.
- Inappropriate behaviour or abuse of authority towards a colleague, member of the public or person in the care of Academy.
- Insubordination.
- Failure to comply with policies and procedures.
- Abuse of the policies and procedures.
- Conduct at work which is likely to offend decency.
- Conduct which could bring the Academy into disrepute.
- Negligence in the performance of duties.
- Misuse of facilities.
- Failure to maintain proper records
- Failure to follow procedures e.g. financial regulations, standing orders
- Failure to comply with health and safety requirements.
- Misconduct in relation to official documents e.g. destroying or mutilating records kept or required or altering/erasing or adding to entries in any such document without legitimate reason.
- Neglect of health e.g. committing an act or adopting conduct which may impede recovery and return to work whilst absent from work due to sickness.
- Engaging in paid employment outside the hours contracted to work without the employer's express permission.
- Conduct outside of the workplace which impacts on the employer.
- Any other act of misconduct of a similar gravity.

3.0 Gross Misconduct

Examples of misconduct which will normally be regarded as gross misconduct are:

- Unauthorised removal of property.
- Stealing from the Academy, its governors, its employees or the public and other offences of dishonesty.
- Sexual offences (including serious misuse of the internet).

- Breaches of the [Equal Access to Opportunities Policy](#), including serious acts of harassment, discrimination or verbal abuse against employees, clients or members of the public on grounds of race, sex, disability or religious belief or any other grounds.
- Fighting / physical assault.
- Harming pupils (as defined by the Children's Act 1989).
- Abuse of Trust relating to pupils within the Academy.
- Establishing inappropriate relationships with children or young people, including through social networking sites.
- Falsification of time sheets or subsistence and expenses claims, sickness self-certification etc.
- Other offences which seriously threaten the security of the pupils, members of the public, employees or property or which seriously damages public confidence in the Academy.
- Deliberate misuse of data protection information and/or deliberate interference with computerised information.
- Falsification of qualifications which are a stated requirement of employment and which result in financial gain.
- Malicious damage to property.
- Serious breaches of health and safety legislation e.g. intentional or reckless interference with or misuse of anything provided by the employer in the interests of health and safety.
- Serious drug/alcohol related offences.
- Serious breaches of the [Acceptable Use Policy](#).
- Serious breaches of the [Code of Conduct Policy](#).
- Failure to disclose any relevant criminal offences prior to employment and any criminal convictions which occur during employment.
- Any other act of misconduct of a similar gravity.

The above lists are neither exclusive nor exhaustive and there may be examples which do not appear above, but may nevertheless be the subject of disciplinary action.

In determining the seriousness of the misconduct, particular regard will be given to the circumstances of the individual case. Factors which can influence a decision as to the seriousness of the offence may include:

- The type, degree and frequency of the misconduct.
- The consequences arising from the misconduct.
- The level of responsibility of the employee concerned

Careful consideration will be given to the above factors in each case. What is regarded as misconduct in some cases may, in others, depending on the circumstances, be regarded as gross misconduct.

3.1 Suspension

Suspension will usually only be invoked when:

- The allegations are so serious that dismissal for gross misconduct could be a possible outcome.
- There is a risk of re-occurrence of the misconduct.
- There is a tangible risk to property or person.
- Allowing the member of staff to remain at work could hinder the investigatory process.

- There is a statutory prohibition in effect which renders employment unlawful.

Where appropriate, suspension will only be applied after alternative measures e.g. a temporary reallocation of duties or relocation have been carefully considered.

Only the Chair and the Principal have the power to suspend a member of staff.

Suspension can only be ended by the Chair.

The Governing Body will be notified of any suspension but not of the details of the case. In certain circumstances it may also be necessary to inform parents of an employee's absence, although details will not be shared.

During a period of suspension, the employee will receive their contractual pay. Where an employee falls sick during a period of suspension, the normal certification requirements and reporting and contractual sick pay entitlements, will apply.

A member of staff will be assigned as a point of contact for the suspended employee (in terms of work-related issues). Their role will not be to discuss or support the disciplinary process.

4.0 Procedure

4.1 Overview

Initial decisions, including dismissal, will normally be made by the Principal, except where:

- The matter relates to him/her.
- He/she has been involved in a disciplinary investigation.

Where possible, the investigation stage of the disciplinary procedure will be operated by a manager other than the Principal. Where this manager recommends a disciplinary sanction, including dismissal, a hearing will take place before the Principal who will adjudicate on the matter. The Principal may be accompanied by a governor(s) and/or an HR advisor, but the decision will rest with the Principal.

Where the Principal has been directly involved in the investigation stage of a disciplinary matter or is a witness to particular conduct relevant to the investigation, a hearing will take place before the Governors' Disciplinary Committee.

The Principal will usually make initial dismissal decisions in cases related to unsatisfactory pre-employment checks and statutory prohibition.

Where the conduct of the Principal is called into question, the Governing Body shall depute a governor to operate the disciplinary procedure. In this case, any formal hearing shall be heard by the Governors' Disciplinary Committee.

All appeals will be heard by the Governors' Disciplinary Appeals Committee.

4.2 Representation

An employee is entitled to be accompanied by a trade union/professional association representative, colleague, friend or other appropriate person, at all formal meetings, hearings and appeals. The employee must make his/her own arrangements for this.

4.3 Investigations

In all disciplinary and dismissal cases, an investigation will be conducted to gather sufficient information and evidence to make a reasoned determination about whether or not the matter needs to be pursued formally at a disciplinary/dismissal hearing.

The investigation may involve interviewing witnesses - and other relevant parties - and taking statements.

The investigation will include a discussion with the employee, usually at an investigatory meeting.

All reasonable effort will be made to complete the investigation without delay.

If, following the investigation, it is considered that a formal hearing is necessary, this will be arranged, except where, by agreement between the parties, the matter is dealt with by other means.

Where an employee admits an allegation, it may not be necessary to carry out a lengthy investigation. Any hearing in these circumstances would be to consider the allegation, the employee's admittance and any mitigation they wish to put forward.

Where an employee's conduct is subject to a criminal investigation, charge or conviction the facts will be investigated. It will not normally be necessary to wait for the outcome of any prosecution before deciding what action, if any, to take.

It will be open to an employee, with advice from their representative, to accept a disciplinary sanction without being subject to the full normal procedure. This is called an 'agreed outcome'. In accepting an agreed outcome, an employee will forego their right of appeal.

In certain circumstances, the Investigating Officer may conclude that formal disciplinary action is not necessary but that professional advice should be given to the employee. This will be in the form of a 'letter of expectation' which will be placed on the employee's file for an indefinite period.

4.4 Disciplinary Hearings

If, after investigation, it is determined that a formal disciplinary sanction or dismissal is appropriate, the matter will be referred to a formal hearing. The Investigating Officer makes a recommendation of a sanction or dismissal, but the decision rests with those hearing the case at the formal hearing. Disciplinary hearings will be carried out without undue delay.

The employee will be given at least seven working days' notice, in writing, of the date, time and place of any hearing. When given this notice, the employee will be:

- Informed of the nature and details of the alleged misconduct/reason for proposed dismissal.

- Informed of their right to be accompanied at the hearing by a representative and of their right to call relevant witnesses.
- Supplied with a copy of the evidence which is to be considered at the hearing, including any witness statements.
- Given an indication of the possible penalty which could be imposed if the allegations were found to be substantiated, e.g. a formal warning or termination of employment by dismissal.
- Informed who will conduct the hearing and, where appropriate, the name of the presenting officer, including any advisers and the names of any witnesses.

No later than three working days before the hearing the employee:

- Must supply the name and status of his/her representative.
- Must supply the names of any witnesses they intend to call and an outline the evidence they will give.
- May submit a written statement or other supporting written evidence if they wish, either direct or through their representative.

At the hearing both parties may:

- Present their case.
- Be questioned on the statements made by them and on any evidence they have submitted.
- Ask questions on any relevant aspect of the evidence presented by the other party.
- Question witnesses.

Employees are required to take all reasonable steps to attend hearings. Hearings may be re-arranged once, where either party or their representatives are unable to attend for a reason that was not reasonably foreseeable. Where an employee fails to provide good reason for non-attendance, those hearing the case will make a decision about whether or not to proceed.

Where a criminal matter is pending and an employee is unable, or is advised not to attend a disciplinary hearing or say anything about a pending criminal matter, a decision may be made based on the available evidence.

In child protection cases, if an employee resigns prior to a formal disciplinary hearing, the matter will still be referred to a hearing for a determination of an appropriate sanction and a referral will be made to the DBS.

4.5 Possible Outcomes

Any decision will be on the balance of probabilities. Where an allegation is proven, any sanction will satisfy the test of reasonableness in all the circumstances and will be proportionate. The following will be considered in determining an appropriate sanction:

- The employee's disciplinary and general record, position and length of service.
- Any explanation or mitigation put forward by the employee.
- Any action taken in similar situations.
- Any relevant unexpired warnings.
- Any other relevant factors.

Depending on the circumstances, disciplinary action could take the following forms:

- Written warning e.g. where there has been a failure to conform to standards
- Final written warning e.g. where there is further misconduct or the misconduct is considered to be sufficiently serious.
- Dismissal with notice e.g. where misconduct is sufficiently serious or where conduct has failed to improve following previous warning(s).
- Summary dismissal e.g. where an act of gross misconduct has been committed.

Warnings will set out the:

- Nature of the misconduct and expectations of future conduct.
- Length of the warning.
- Consequences of any future misconduct.

*Normally, the validity of disciplinary warnings will be considered to have expired after one year provided that no further warnings have been issued and no disciplinary action has been taken against the employee during that period. Expired warnings will be disregarded in the event of any future disciplinary action (although a record of the warning will not be removed from the personal file) but the fact that there is an expired warning may explain why the employer does not substitute a lesser sanction.

*There may be occasions, however, where the nature or pattern of misconduct and the post concerned do not make it desirable and appropriate for the one year time limit to apply. In these circumstances the employee will be notified, in writing, of the period applicable to the warning, which will not normally exceed 5 years. Exceptionally, there may be circumstances where the misconduct is so serious e.g. safeguarding, that it cannot be disregarded for future disciplinary purposes. In such circumstances, the written warning can never be disregarded and any recurrence may lead to dismissal.

4.6 Notification of Outcome of Hearings

Where possible the decision will be notified verbally to the employee at the end of the hearing. In any case, the employee will be issued with a written notification of the outcome within five working days of the hearing.

Where appropriate, this letter will contain notice of dismissal. This may be rescinded subsequently on appeal.

Employees will be asked to sign and return a copy of such notifications to confirm that they have received and understood them.

Employers are required to refer any safeguarding matters to the DBS who will consider the employee's suitability to work with children.

4.7 Appeals

An employee has a right of appeal against any disciplinary sanction/dismissal. An employee may forego his/her right to appeal.

Notice of any appeal must be given in writing to Chair within five working days of receipt of the written notification by the employee of the outcome of the hearing, clearly stating the grounds upon which the appeal is made.

All appeals will be heard by the Governors' Disciplinary Appeal Committee. The decision of this committee is final, subject to the employee's rights at law.

The employee will be given at least five working days' notice of the appeal hearing in writing.

A disciplinary appeal hearing will normally be a full rehearing of the original case unless the appeal is on a very specific and narrow point. An appeal will not normally hear matters which were not upheld at the original hearing.

New evidence, provided it is relevant to the original allegation(s), can be introduced at the appeal stage by either party. All parties' papers, including any new evidence relevant to the appeal, must be submitted to the other party and the Governors' Disciplinary Appeals Committee at least 3 working days before the appeal hearing.

The outcome of the appeal will be notified as per the original hearing, except that there is no further right of appeal within these procedures.

4.8 Records

Notes of hearings and meetings with the employee will be taken and shared with them as soon as possible after the hearing. The employee has the right to challenge the accuracy of any minutes and to have these recorded.

No-one may record meetings or hearings, except for the Clerk, to assist with producing the minutes, where permission is given by all parties. The recording will be destroyed once minutes are completed.

Details of any formal action, including any warnings will be retained on the employee's file. Disciplinary sanctions will be disregarded after the expiry of their life.

Letters of expectation are not disciplinary sanctions and will remain on the employee's personal file indefinitely.

If an investigation or hearing concludes that an allegation is totally unsubstantiated, all records will be removed from the employee's personal file. The only exception would be where the allegation relates to safeguarding issues.

Details of any ongoing disciplinary action and/or sanctions, and in the case of safeguarding matters and expired warnings, will be referred to when responding to an employee reference request.

5.0 Grievances raised during Disciplinary Procedures

If an employee raises a grievance during the course of the disciplinary/dismissal procedure, related to the case, the grievance will normally be dealt with as part of the formal disciplinary hearing/appeal process. If appropriate, given the nature of the grievance, the disciplinary/dismissal process may be temporarily suspended in order to deal with the grievance.

6.0 Ill Health during Disciplinary Procedures

It is recognised that disciplinary procedures can be distressing and may sometimes lead to an employee feeling unwell. The Governing Body believe that in these circumstances, it is 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.

7.0 Other Dismissals

7.1 Some Other Substantial Reason (SOSR)

This may include:

- Statutory prohibition¹
- Unsatisfactory pre-employment checks²
- Occasions where an employee's conduct outside of the Academy may not in itself impact directly on the employment contract, but may nonetheless raise serious concerns about a person's continued employment.
- An irreparable breach of the implied contractual term of trust and confidence in the employment relationship.

¹Where the prohibition is evidenced and unavoidable, the Principal will make a decision whether to terminate the contract. Where the prohibition is already in effect, termination will be with one week's notice. Where the prohibition is due to come into effect, as much notice as possible will be given. If the prohibition ceases to apply during the period of notice, notice of termination will be withdrawn.

²Where the employment has not commenced, the offer will be withdrawn. Where employment has commenced, under a conditional offer, the Principal will make a decision whether to terminate the contract. Dismissals would be with statutory notice. Failure to disclose a relevant criminal offence constitutes gross misconduct, and will usually result in summary dismissal.