

# The Family of Learning Trust

## Disciplinary Policy



<b>Version</b>	<b>02/24</b>
<b>Name of Policy Writer</b>	<b>EducateHR Ltd</b>
<b>Last Updated</b>	<b>February 2024</b>
<b>Next Review Due</b>	<b>February 2025</b>

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## **1. Introduction**

- 1.1 According to ACAS, '*... fairness and transparency are promoted by developing and using rules and procedures for handling disciplinary situations.*' Such rules and procedures should be set down in writing and should be both clear and specific.
- 1.2 Employees are entitled to receive a written statement of particulars in relation to their employment. This statement must include reference to a disciplinary policy, and more specifically should clarify the arrangements in place for an employee to complain about (or appeal against) a sanction, including a decision to dismiss.
- 1.3 This policy is based on the premise that the governing body has delegated the authority to dismiss to the headteacher. The headteacher may further delegate to the relevant line manager responsibility for deciding sanctions up to (but not including) dismissal.
- 1.4 However, if the headteacher feels that it is inappropriate for a disciplinary matter to be dealt with within the terms of delegation from the governing body they may request that the matter is dealt with by governors (and where the governing body has **not** delegated authority to dismiss it will be appropriate that any disciplinary hearing in which this outcome is likely to be under consideration as a potential sanction (in response to the circumstances of the individual case) should be conducted by governors).
- 1.5 In the event of the headteacher themselves being subjected to disciplinary procedures, the role normally performed by the headteacher will be undertaken, throughout this policy, by the chair of governors. In such circumstances the chair should be supported with appropriate HR advice.

## **2. Purpose and scope**

- 2.1 These procedures apply to all employees in the academy. Nothing in these procedures is intended to contravene the statutory rights, duties and obligations of employees, headteachers and governing bodies.
- 2.2 The aim of this policy is to ensure that a fair and consistent procedure is applied to all employees, having regard to the nature of their employment, when allegations of misconduct are investigated, and similarly to ensure that fair and consistent action is taken as promptly as possible in response to any breaches of discipline.
- 2.3 Where appropriate, well planned support and/or counselling should precede formal disciplinary procedures and the employee helped to improve or resolve the situation.
- 2.4 Where concerns relate to an employee's professional competence the matter should be dealt with under the academy's Capability Policy.
- 2.5 Disciplinary procedures should not be thought of simply as a means of imposing sanctions or as necessarily leading to dismissal. The intention of the policy and procedures is that they should encourage all employees to achieve and maintain high standards of conduct.

## **3. Guidance notes**

- 3.1 To observe the rules of natural justice the same person should not conduct both the detailed investigation (in situations where this is deemed to be indicated) and any subsequent hearing under this procedure.

- 3.2 No formal action will be taken in respect of an employee who is a recognised trade union representative until (following agreement with the individual concerned) the circumstances of the case have been discussed with an official of their trade union. If the individual does not wish their trade union official to be involved, disciplinary process should continue.
- 3.3 It is recommended that the panel (or chair, if unaccompanied\*) in any disciplinary hearing or appeal should, in all instances, be provided with HR advice in relation to determining an appropriate level of sanction.

*\*For clarity, hereinafter in respect of a formal disciplinary hearing the words 'panel' or 'chair' should be taken to include a single individual (whether headteacher or governor) who may be hearing the case alone.*

#### **4. Representation at disciplinary hearings**

- 4.1 Employees have a statutory right to be accompanied at disciplinary hearings by a recognised trade union representative or work colleague. The academy extends this right to investigatory meetings.
- 4.2 An employee may not be represented in such hearings by a person who has a conflict of interest.
- 4.3 The representative or companion cannot be prevented from presenting and summing up the employee's case. They do not, however, have the right either to answer questions on the employee's behalf or to prevent the employer from presenting their case.

#### **5. Suspension**

- 5.1 An employee may be suspended from duty (without prejudice) where it is considered unsuitable for them to remain at work. This may include circumstances where their absence is necessary to enable appropriate investigation to be undertaken, or where the presence of that individual might otherwise undermine the investigation or put the academy (or any student or staff member) at risk. Allegations of gross misconduct will most often lead to suspension.
- 5.2 Suspension is an option to be considered by the employer which represents a neutral act. The employee is entitled to receive contractual pay throughout any period of suspension.
- 5.3 Suspension should only be imposed after due consideration of the facts and after a preliminary internal investigation has taken place. It should be reviewed at regular intervals to ensure it is not unnecessarily protracted. The period of suspension should always be kept to a minimum.
- 5.4 If suspension is deemed appropriate the employee must be notified in writing, explaining the reasons and the conditions attached.
- 5.5 An appropriate senior manager at the academy should always be nominated by the employer to act as a point of contact during the period of suspension, and the employee should be provided with the name of this individual, and details of how they can be contacted.

## **6. Allegations of abuse made against staff**

- 6.1 In the event of the academy becoming aware of an allegation of child abuse being made against a member of staff (whether initially reported internally or externally) advice should be sought directly, in line with KCSIE (Keeping Children Safe in Education), from the Designated Safeguarding Lead who may in turn contact the Local Authority Designated Officer (or LADO) and/or the police.
- 6.2 The Local Authority Designated Officer (or LADO) and/or the police may deem it necessary to arrange for a multi-agency strategy meeting to be held (or at the very least a discussion with, if applicable, the child's case manager) before an investigation is undertaken or disciplinary process (if indicated in relation to a member of staff) is initiated.
- 6.3 A meeting (or discussion) of this nature is intended to clarify the precise content and context of the allegation before determining the appropriate course of management. Sharing information in this way is vital to ensure that the correct action is taken. Additional reference should be made to the academy's Safeguarding Policy.

## **7. Alleged criminal offences**

- 7.1 The decision to initiate disciplinary action in criminal cases is a matter for the academy. While this may involve waiting for the outcome of external proceedings before going ahead, there is no obligation on the academy to do so.
- 7.2 Before proceeding to dismissal (should this be felt, after due process, to be appropriate) the academy must have a reasonable belief in an employee's guilt and must have carried out its own investigation – in other words relying solely on evidence from a police investigation is not usually sufficient.

## **8. Referrals to TRA and DBS**

- 8.1 Where an employee in a teaching role has been dismissed for misconduct (or where dismissal would have been the likely outcome had they not resigned before the disciplinary process was completed) the employer should consider whether there is a requirement to refer the individual to the Teaching Regulation Agency (TRA). A referral to this body is appropriate if the alleged misconduct is so serious that it warrants a decision on whether the teacher should be prevented from teaching.
- 8.2 The TRA, which is responsible for the regulation of the teaching profession, has the power to ensure that teachers, in cases of serious professional misconduct, are subject to professional sanctions which can include being suspended or barred from teaching.
- 8.3 In respect of disciplinary action relating to serious safeguarding issues involving either the risk of harm, or actual harm, to a child, employees (whether teachers or support staff) should be referred to the Disclosure and Barring Service (DBS) (and in the case of teachers, the employee may additionally be referred to the TRA in accordance with the preceding clause).

## **9. Overlapping disciplinary and grievance cases**

- 9.1 If a grievance is raised by an employee after disciplinary proceedings against them have commenced, and the grievance relates to the disciplinary case (unrelated cases can proceed, in accordance with the organisation's Grievance Policy, in parallel), a decision

will be taken **either** to suspend the grievance until after the disciplinary issue has been dealt with **or** to hear the grievance at the disciplinary hearing.

- 9.2 Only in exceptional circumstances will a disciplinary hearing be suspended to deal with a grievance that has been raised after disciplinary process has commenced.
- 9.3 Depending upon the nature of the grievance, the headteacher may need to consider bringing in another manager to continue to hear the disciplinary case.
- 9.4 It is advisable that an HR Advisor is present at all formal disciplinary (and/or grievance) hearings to support management and/or governors as appropriate.

## **10. Sickness absence and disciplinary process**

- 10.1 If an employee is unable to attend a disciplinary hearing due to sickness absence, it is prudent to ascertain when they are likely to return and to consider postponing (and rearranging) the hearing if a return to work is anticipated within the foreseeable future.
- 10.2 If sickness absence appears likely to be long term, the employer should make a referral to Occupational Health (or alternatively seek a medical opinion from the employee's GP) to ascertain whether the individual is fit to attend a disciplinary hearing. If the employee is not well enough to take part in the proceedings, their absence should continue to be managed in accordance with the academy's Attendance Management policy.
- 10.3 If medical opinion is that the employee is fit to attend a hearing, the disciplinary process should be continued, subject to any conditions set out by the medical professional.
- 10.4 If the employee is deemed unable to attend, they can be asked to submit a written statement for consideration by the chair or alternatively their nominated representative may present their case on their behalf.

## **11. References following termination of employment on health grounds**

- 11.1 If disciplinary allegations raised against an employee were of a grave nature and remained unproven at the point of dismissal on grounds of capability in relation to grounds of ill health (as could happen if formal proceedings were to be frustrated indefinitely due to an employee's protracted sickness absence) then the existence of such allegations should be included in any reference given by the academy if there is good reason to believe that a referral to the Local Authority Designated Officer (or LADO) would have taken place in relation to a misconduct charge had the employee remained at work.
- 11.2 It should be noted that following a disciplinary hearing any reference issued by the employer should (as in every circumstance) be fair, accurate and not misleading.

## **12. Investigating disciplinary matters**

- 12.1 When faced with a potential disciplinary matter, an investigation must be carried out as soon as possible before any formal action is taken. This may be undertaken by the headteacher (or the employee's line manager) although in some cases it may be more appropriate for the headteacher (or line manager) to appoint another individual as 'investigating officer' to conduct a thorough (and impartial) investigation.

- 12.2 Where it is deemed appropriate for an investigating officer to be appointed, they will produce a factual report for consideration by the headteacher (or line manager).
- 12.3 It will usually be necessary, as part of the investigation, to invite the employee to attend an investigatory meeting (in which the employee has a right to be accompanied by a trade union representative or work colleague). The purpose of the investigatory meeting is to ascertain the facts and to allow the employee to respond to the allegation(s) of misconduct.
- 12.4 A letter should be sent inviting the employee to the investigatory meeting, and this letter should outline the concerns to be investigated. All such meetings should be fully documented. In some cases, further meetings may be required to establish the full facts of the matter.
- 12.5 Following investigation, the evidence will be reviewed by the headteacher (or line manager) to determine whether there is a case to answer.
- 12.6 Any consideration of the evidence should include:
- the nature of the alleged breach of discipline, and the circumstances and consequences of the breach
  - the employee's role, experience, length of service and disciplinary record
  - the evidence of witnesses (written and signed statements)
  - any previous related incidents
  - whether the employee has received appropriate counselling or training
  - any mitigating circumstances, for instance ill health or domestic problems, or provocation.
- 12.7 It may be found, following investigation, that there is no substance to the allegations and therefore no case to be heard. The employee should be informed in writing that the case will proceed no further.
- 12.8 Alternatively, it may be found, following investigation, that there is substance to the allegations. If so, a decision must be made as to whether the matter can be dealt with by means of informal disciplinary action such as an oral warning (see following section) or whether it is sufficiently serious as to warrant formal disciplinary action.

### **13. Disciplinary procedure – informal stage**

- 13.1 If an investigation has revealed a minor breach of discipline it is possible for the employee to be issued with an oral warning without recourse to a formal disciplinary hearing.
- 13.2 The oral warning is in writing and kept on file for three months. It records the circumstances in which the oral warning has been issued, the standards expected of the employee and any relevant support or training to be provided.
- 13.3 The oral warning will also state that if there are any further acts of misconduct formal disciplinary action is likely to be instigated.

## **14. Invitation to formal disciplinary hearing**

- 14.1 If a more serious situation emerges as a result of the investigation (or if the employee's conduct does not meet acceptable standards following the issue of an oral warning) and it is determined that there is a case to answer then formal proceedings will be instigated and the employee invited to a disciplinary hearing.
- 14.2 If a decision is taken to implement formal disciplinary procedures, the staff member concerned must be made aware in writing of the nature of the allegation(s), must be given reasonable notice of the time and venue of the formal disciplinary hearing and must be made aware of their right to be represented in the disciplinary hearing. It is recommended that correspondence to this effect is either delivered to the employee by hand or sent by recorded delivery.
- 14.3 Copies of any statements (including any investigation report) to be used in the hearing, the management case, and the relevant disciplinary procedures should be sent to the employee. Ideally, these should accompany the notification of the disciplinary hearing but if this is not possible, the information should be sent under separate cover to the employee within a reasonable timescale prior to the disciplinary hearing.
- 14.4 If the employee intends to rely on any written material in the hearing (whether this consists of a personal statement or any other material to be regarded as evidence in their defence) this documentation should be submitted to management (and forwarded to the person or persons hearing the case, possibly via the clerk to governors) within a reasonable timescale prior to the disciplinary hearing.
- 14.5 If management intend to call any witnesses during the disciplinary hearing their identity should be disclosed to the employee within a reasonable timescale prior to the hearing.
- 14.6 Similarly, if the employee intends to call any witnesses during the disciplinary hearing their identity should be disclosed to management within a reasonable timescale prior to the hearing.
- 14.7 Should witnesses on either side be employees then management is expected to ensure their availability for this purpose during the hearing.
- 14.8 If the employee's appointed union representative is not available on the date proposed for the hearing, the hearing can be deferred for up to 5 working days.

## **15. Formal disciplinary hearing**

- 15.1 The disciplinary hearing will be conducted in accordance with Appendix 1 of this policy.
- 15.2 The case may be heard by the headteacher alone (if they have had no previous involvement in the case), or alternatively may be heard by a panel comprising up to three members of the governing body.
- 15.3 No person who has had previous involvement in the case may sit on the disciplinary panel and it is good practice that no staff governor should sit in judgement on a disciplinary matter.
- 15.4 The disciplinary hearing will proceed as follows:
  - i) the chair explains the procedure to be followed
  - ii) the disciplinary case is presented by the chosen academy representative

- iii) questions may be asked by the employee (or their representative) and the panel
- iv) the chosen academy representative may call witnesses (if appropriate) in furtherance of the management case
- v) the management witnesses may be questioned by the employee (or their representative) and the panel
- vi) the employee (or their representative) presents their defence to the management case
- vii) questions may be asked by the chosen academy representative or the panel
- viii) the employee may call witnesses (if appropriate) in furtherance of their defence
- ix) the employee's witnesses may be questioned by the chosen academy representative and the panel
- x) the chair will confirm that all relevant evidence has been presented, and will invite the chosen academy representative to sum up their case
- xi) the chair will then invite the employee (or their representative) to sum up their case
- xii) the chair will then briefly adjourn the hearing to consider their decision
- xiii) in addition to oral evidence, the panel will also consider any written evidence submitted\* before making their decision.

*\* **Additional** written evidence should only be admissible at this stage of the process if it could not reasonably have been submitted for consideration prior to the hearing in accordance with the preceding section.*

15.5 Following a brief adjournment the chair will inform both management and employee whether they are able to make a determination on the day or whether further time is required for consideration, in which case the employee will be notified as soon as possible once a decision has been reached.

15.6 If a decision is reached on the day, the chair will communicate this to the employee in person but will additionally confirm the decision in writing by means of an outcome letter.

## **16. Outcomes available to disciplinary panel**

16.1 Having considered all relevant material, the panel must determine whether the management case is proven. Should the panel **not** be satisfied that this is proven, then the employee should be informed that there is no case to answer and accordingly the matter is closed.

16.2 If the case is found proven the panel should then consider whether a sanction is warranted and, if so, must consider what level of sanction would be appropriate.

16.3 Outcome options available include:

- admonishment
- first written warning – which normally remains in force for 6 months
- final written warning\* – which normally remains in force for 12 months

*\*A final written warning may (depending on the seriousness of the case) be issued even if no disciplinary action has previously been taken.*

- demotion\* (as an agreed alternative to dismissal)

*\*Demotion (normally accompanied by a final written warning) can only be effected (by means of a variation to contract) **with the agreement of the individual concerned** and accordingly there can be no appeal against demotion – only against the initial decision to dismiss.*

- dismissal
- summary dismissal (only for gross misconduct\*).

*\*Gross misconduct is conduct of such nature that the employer cannot reasonably continue to allow the employee to remain at their place of work – examples of behaviour which might constitute gross misconduct are provided in Appendix 2.*

16.4 When deciding upon a sanction the following circumstances should always be considered:

- the seriousness of the offence
- whether the offence was repeated (particularly if a live warning is on file)
- whether there are mitigating circumstances
- the employment record of the employee concerned.

16.5 It is recommended in all instances that the panel is provided with HR advice in relation to determining an appropriate level of sanction.

## **17. Guidance on warnings**

17.1 Any written warning must specify the following:

- the level of the warning (first or final)
- the nature of the unsatisfactory conduct
- the change in behaviour required (with appropriate timescales)
- how long the warning will remain current
- information on the consequences of repeated misconduct (so when a final warning is issued this must make clear that any further misconduct may result in dismissal)
- provision of relevant support and guidance
- the employee's right of appeal (and in relation to this must make clear both the time limit for submission of an appeal and the provision that any submission must identify the specific grounds on which the appeal is based).

## **18. Formal communication of outcome**

18.1 A formal outcome letter, stating the findings of the panel and detailing any sanction deemed appropriate, must be sent to the employee, even if the decision of the panel has already been communicated to the employee at the conclusion of the hearing.

18.2 The outcome letter should be sent as soon as possible, but in all cases the employee should receive formal notification of the outcome within five working days of the disciplinary hearing.

18.3 The outcome letter may be handed to the employee but if this is not possible it should be sent by recorded delivery.

18.4 If the outcome of the disciplinary hearing is dismissal the outcome letter must be sent by recorded delivery, and the content of the letter must ensure that the employee is informed

clearly both as to the reason(s) for their dismissal and the date of termination of their employment.

- 18.5 The outcome letter must, in all cases, advise the employee of the right of appeal against any formal disciplinary sanction, and must also specify to whom an appeal (in writing) should be addressed (see next section).

## **19. Appeal process**

- 19.1 An employee is entitled to appeal against any formal disciplinary sanction.
- 19.2 An appeal must be lodged in writing to the appeals panel (via the clerk to governors or other designated person) within five working days of receiving written notification of the disciplinary outcome. The written appeal must identify the specific grounds for appeal.
- 19.3 The appeal hearing will not be a re-hearing of the original allegation(s) unless the appeal is in relation to procedural issues. The appeal hearing will only focus on the grounds for appeal, for instance new evidence (but only if this evidence was not available at the time of the initial disciplinary hearing) or undue severity or inconsistency of the penalty.
- 19.4 A separate appeals panel must be established to consider any appeal that may be submitted. This panel will usually consist of no more than three members of the governing body. (An appeal body must have no fewer members than the number who constituted the panel for the original hearing.)
- 19.5 The appeal should be heard by a person (or persons) no less senior in authority than the person(s) who took the initial disciplinary decision and who has (or have) not had any involvement in either the original hearing or in any matters pertaining to the disciplinary process.
- 19.6 The appeal process should not result in any increase in the level of sanction.

## **20. Appeal hearing procedure**

- 20.1 The employee must be given sufficient notice of the date, time and venue of the appeal hearing. A letter should be sent to all relevant parties informing them of these details.
- 20.2 The letter of invitation should also state that the outcome letter from the original disciplinary hearing and all relevant notes and records will be made available to the appeal panel.
- 20.3 The date of the appeal hearing may be rearranged (within five working days of the original date set) if requested, for a valid reason, by the employee or their union representative.
- 20.4 Following introductions and the explanation of the purpose of the hearing and how it is to be conducted, the employee and their representative or companion are invited to present their grounds for appeal. Where the specific grounds for appeal are unclear, the panel may ask for clarification.
- 20.5 The chair of the original disciplinary hearing will then present the reasons for the decision taken at that time and may call as a witness the individual who presented the management case to the original disciplinary panel.

- 20.6 Once all relevant material has been thoroughly explored by the panel they will deliberate before reaching a decision, which will then be conveyed by the chair. This decision will be either to uphold the appeal and overturn a previous decision or to reject the appeal and uphold the previous decision.
- 20.7 The decision of the appeal panel will normally be communicated verbally before the hearing is concluded, although in certain circumstances it may be appropriate to defer judgement pending further consideration.
- 20.8 In all cases the member of staff will be informed of the outcome of the appeal hearing in writing, normally within five working days of the date of the appeal hearing.
- 20.9 The decision of the appeal panel is final.

## **21. Other policies and procedures**

- 21.1 This policy will be supported by the following policies and procedures:
- Attendance Management Policy
  - Capability Policy
  - Grievance Policy
  - Safeguarding Policy

## **Appendix 1: Flowchart – Formal Disciplinary Hearing**

### **Chair of the governor disciplinary panel (*where appropriate, this may be the headteacher*)**

- makes introductions of everyone at the hearing describing their various roles
- describes reason for the hearing
- explains the procedure to follow at the hearing
- informs the employee or representative of their right to ask for an adjournment at any time during the hearing

### **School representative (either the headteacher or a senior staff member)**

- presents disciplinary case and the evidence to be considered
- is cross-examined by the defendant (or their representative)
- presents witnesses (if appropriate) for separate questioning by (firstly) the defendant (or their representative) and (secondly) by the chair and any panel members
- is questioned on their evidence by the chair and any panel members

### **Defendant (employee or representative)**

- presents defence case
- is cross-examined by the school representative
- presents witnesses (if appropriate) for separate questioning, by (firstly) the school representative and (secondly) by the chair and any panel members
- is questioned on their evidence by the chair and any panel members

### **Chair of the governor disciplinary panel**

- decides that all material evidence has been presented
- informs both parties of their right to an adjournment before summing up

### **School representative**

- sums up their case

### **Defendant (employee or representative)**

- sums up their case

### **Chair of the governor disciplinary panel**

- asks both parties and their representatives, advisers, etc to leave the room
- decides (in conjunction with any other panel members) on appropriate course of action/sanction, taking advice from HR (as appropriate)
- if decision can be conveyed without further delay, calls both parties (and any relevant persons present in support) back into the room and informs them of decision reached, or alternatively undertakes to inform both parties of the outcome in writing within a reasonable timescale.
- confirms the decision in writing as soon as possible

## Appendix 2: Examples of Gross Misconduct

The following list gives examples of behaviour that may be regarded as serious disciplinary breaches or completely unacceptable misconduct. The specific circumstances of each case should be carefully considered. These examples are neither exhaustive nor exclusive.

- Serious or persistent failure to comply with the school's recognised policies and procedure
- Unauthorised removal of property, or stealing from the school, its pupils, members of staff or the public and other offences of dishonesty
- Fraud and corruption, deliberate falsification of records
- Sexual offences including offences against children and young people, abuse of trust, grooming, accessing or downloading or sending obscene, indecent or offensive images or statements
- Child abuse
- Sexual misconduct at work
- Inappropriate use of social media (involving reputational damage to the organisation)
- Fighting, physical assault, violent and/or intimidating conduct
- Falsification of subsistence and expenses claims etc
- Falsification of qualifications which are a stated requirement of employment or which result in financial gain
- Malicious or deliberate damage to the school's property
- Serious breach of health and safety or breaches of safety regulations endangering other people, including deliberate damage to, neglect or misappropriation of safety equipment
- The persistent and wilful refusal to carry out a reasonable instruction despite warnings of the consequences of continued refusal
- The commission of a serious breach of duty prejudicial to the school's relations with members of the public or other outside contracts or any wilful attempt to damage the standing or position of the school
- Serious acts of unlawful discrimination against other employees, pupils or members of the public in the course of duty; or serious or persistent sexual or racial harassment, victimisation or bullying
- Serious breach of school's sickness absence reporting system: undertaking paid work during hours whilst reporting sick
- Serious misuse of the internet/contravention of the school's ICT policy (such as for the purposes of running a business) including unauthorised entry to computer records
- Serious breach of the normal trust and confidence, which should exist between employee and employer, bringing the school into serious disrepute
- Serious negligence that causes unacceptable loss, damage or injury
- Serious act of insubordination
- Continued and repeated offences of misconduct
- Serious incapability through alcohol or being under the influence of illegal drugs

Acts of gross misconduct normally lead to suspension while the alleged offence is investigated. The procedures to be followed in cases of gross misconduct are the same as those described for misconduct but may proceed directly to a hearing with consideration of a dismissal decision by the headteacher or the disciplinary panel of the governing body.

If, on completion of the investigation and hearing, the disciplinary panel is satisfied that gross misconduct has occurred, the result may be summary dismissal without either notice or payment in lieu of notice. However, in such an event the right to appeal against the decision to dismiss still stands.