



ALL SAINTS
Multi Academy Trust

Trust Disciplinary Policy & Procedure

December 2017

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| Review Period | Two Yearly |
| Person Responsible For Policy | Director of Finance & Resources |
| Governing Committee | Trust Board |
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1. INTRODUCTION

From time to time there will be circumstances when staff behaviour and conduct falls short of standards expected in school. This policy and procedure provides clear guidance on how instances of alleged misconduct will be managed.

2. PURPOSE

The purpose of the policy and procedure is to provide a prompt, fair and consistent method of dealing with any alleged act of misconduct.

3. SCOPE

This policy and procedure applies to all employees who are employed by the Trust.

4. THE DISCIPLINARY POLICY

4.1 In many cases the right word, at the right time, conveyed in the right way, may be all that is needed. Such management advice is often a satisfactory method of dealing with a minor breach of discipline or unsatisfactory conduct. Employees should be advised that a further infringement may result in formal disciplinary action being considered. A record should be kept of any such management advice and may be referred to at a later stage to demonstrate that an informal approach was attempted.

4.2 No disciplinary sanction should be issued against any employee until the case has been sufficiently investigated, unless the matter is being managed, by agreement, under paragraph 4.7.

4.3 Where an employee is unable, or is unwilling, to attend a meeting or hearing, that meeting or hearing may proceed after all factors are taken into consideration. In the case of a Hearing a decision can be made on the basis of evidence available at that time.

4.4 At all stages of the formal procedure the employee has the right to request to be accompanied at meetings by an appropriate companion, provided their presence would not prejudice the meeting or otherwise be a clear conflict of interest.

The companion may be:

- a fellow employee (ie another of the employer's employees)
- an official employed by a trade union
- a workplace trade union representative, as long as they have been reasonably certified in writing by their union as having experience of, or having received training in, acting as a worker's companion at disciplinary or grievance hearings.

If the companion cannot attend a meeting on a proposed date, the employee can suggest an alternative time and date so long as it is reasonable and it is not more than five working days after the original date.

No third party representatives are entitled to attend meetings (eg Solicitors, family members).

4.5 All those involved in any aspect of the Disciplinary Procedure will treat all information in connection with the case as strictly confidential.

4.6 Where an allegation of misconduct or gross misconduct involves any police enquiries then there is no requirement to await the outcomes of those enquiries before undertaking and completing

any management investigation and disciplinary process, unless explicitly advised not to by the police.

- 4.7 If, at any stage of the Disciplinary Procedure an employee accepts that his / her actions constitute misconduct and dismissal is an unlikely outcome, then a disciplinary sanction may be issued without recourse to a formal disciplinary hearing, if management and the employee agree that this is an acceptable way forward. The sanction issued must be reasonable in the circumstances. In such circumstances there will be no right of appeal.

THE PROCEDURE

5. PRINCIPLES

- 5.1 The Head of School or other appropriate person instructed by him or her will have authority to act as investigating officer. It is the role of the investigating officer to explore allegations of misconduct and to present the findings of such investigation if necessary.
- 5.2 Where an allegation is received against the Head of School (or where the Head of School is a witness to the alleged disciplinary matter) it is the responsibility of the Chair of Governors to act as or appoint an appropriate investigating officer. In these situations, the Head of School must only be made aware of the allegations when it is appropriate or necessary to do so (i.e. they must be treated in the same way as any other witness/member of staff under investigation).
- 5.4 Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. Depending on the circumstances, it is advisable to give notification of the matter at an early stage to an official employed by the union, after obtaining the employee's agreement.
- 5.5 Where an employee raises a grievance during a 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.

6. INVESTIGATION

- 6.1 Upon receipt of an allegation concerning the conduct of an employee, arrangements should be made for the issue to be investigated by an officer who has preferably no prior involvement in any of the case. It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case.
- 6.1.1 The investigating officer must take care to ensure the integrity of the investigation is maintained, and to ensure that no conflicts of interest exist. For example, witnesses should be provided with the minimum possible level of information regarding the nature of the allegation to ensure their evidence is not prejudiced.
- 6.2 All employees are required to co-operate fully with the investigating officer to ensure that the investigation can be completed as swiftly and thoroughly as possible.
- 6.3 It is the decision of the investigating officer what information is relevant to the case. The gathering of evidence may entail carrying out interviews with the employee concerned and third parties such as witnesses, colleagues and managers, as well as analysing written records and any other available information. All witness interview notes will be taken, shared with the individual for accuracy and signed and dated. Witnesses may be asked to provide their comments in the form of signed and dated statement(s) as well as or instead of attending an investigatory interview.

6.4 Interviewing Children as Witnesses.

Safeguarding the welfare of children must be the highest priority during any investigation and if it is necessary to gather information from children the following guidance should be considered:

6.4.1 The number of people present at the interview with a child should be kept to a minimum to avoid intimidating or inhibiting the child.

6.4.2 Good practice would be for the investigator to sit at a table and the clerk taking notes should sit behind the student out of sight. The student has support with them – usually a pastoral member of staff with whom the student feels comfortable.

6.4.3 The investigator should pre-write the questions and anticipated pathways through the questions and these should be discussed and agreed with the employee and, where appropriate, their trade union representative.

6.4.4 Children should not be asked to attend disciplinary hearings.

6.5 At the conclusion of the investigation, the investigating officer will determine if there are reasonable grounds to proceed to a disciplinary hearing.

7. **NO CASE TO ANSWER**

7.1 Where the investigating officer determines that the evidence collated does not support the need to proceed to a hearing, no reference will be made to the issue on the employee's personnel file and for all allegations, other than those of a safeguarding nature, documents collated as part of the investigation will be destroyed. The employee will be advised accordingly in writing and, if suspended, the employee will return to duty as soon as is reasonably practicable.

7.2 Where the allegations relate to safeguarding a clear and comprehensive summary of the allegations made, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, will be kept on the employee's confidential personnel file. A copy of the information will be provided to the employee concerned. The record should be retained at least until the employee has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer.

8. **GROSS MISCONDUCT**

8.1 It is the responsibility of the investigating officer to consider at what level the allegation(s) should be considered. Only allegations considered as gross misconduct may result in summary dismissal (ie dismissal without notice).

8.2 The following is a **non-exhaustive** list of examples of gross misconduct, taken from the ACAS Guide for Managing Discipline at Work: -

- a) theft or fraud
- b) physical violence or bullying
- c) deliberate and serious damage to property
- d) serious misuse of an organisation's property or name
- e) deliberately accessing internet sites containing pornographic, offensive or obscene material
- f) serious insubordination
- g) unlawful discrimination or harassment
- h) bringing the organisation into serious disrepute

- i) serious incapability at work brought on by alcohol or illegal drugs
- j) causing loss, damage or injury through serious negligence
- k) a serious breach of health and safety rules
- l) a serious breach of confidence.

9. SUSPENSION

- 9.1 An employee should not automatically be suspended when an allegation of gross misconduct is made.
- 9.2 Initial consideration should show that if proven the allegation(s) would be regarded as so serious that it would cast doubt on the suitability of the employee for continued employment. Suspension may be considered at any time during the investigation should information warranting suspension be obtained.
- 9.3 Whenever possible the employee should be suspended at a meeting with an appropriate manager or governor, and should be allowed to be accompanied by a trade union representative. Where a representative is not available to attend a meeting, the suspension will still go ahead. Suspension will be confirmed in writing.
- 9.4 There may be occasions, depending on the circumstances, when suspension is not imposed. To inform this decision the investigating officer will consider whether the employee's continued presence in the normal workplace, or elsewhere, could hinder a fair and proper investigation.
- 9.5 The suspension itself is not a form of disciplinary action, nor is it part of the investigation. Therefore, the suspending manager / governor is not prevented from being involved at a subsequent stage of this procedure.
- 9.6 In cases where a period of suspension is considered necessary, this period should be as brief as possible. The situation should be reviewed regularly and, if information is found that suggests the allegations are not as serious as initially determined, suspension should be lifted.

10. DISCIPLINARY HEARING

- 10.1 Once a decision is taken that a disciplinary hearing is required the employee should be invited in writing to the hearing and given at least ten working days notice of the date of the hearing. (or earlier by agreement)
- 10.2 In the situation where the governing body of a school has delegated authority to the Executive Headteacher or Head of School he or she, where he or she has not been previously involved, may hear the case and decide an appropriate sanction.
- 10.3 Where the Executive Headteacher / Head of School has been previously involved or the authority to give appropriate consideration as not been delegated, any disciplinary decision will be considered by a committee of governors consisting of not less than three governors. However, where this is not possible the committee may comprise two governors who will have delegated authority to determine an appropriate outcome.
- 10.4 All relevant information and details of possible consequences should be provided to the employee and the committee/ Head of School by the investigating officer at least ten working days before the meeting. Notification of the meeting should include details of the time, date and venue and should advise the employee of their right to representation. At this time the investigating officer will identify any witnesses who may appear.

- 10.5 If the employee wishes to refer to documents / evidence as part of their representations at the disciplinary hearing these papers must be shared with all parties no less than three working days before the hearing.
- 10.6 The investigating officer shall present their findings to the committee/ Head of School and shall be entitled to call witnesses as necessary. The employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They should also be given opportunity to raise points about any information provided by witnesses.
- 10.7 The committee/ Head of School will consider all representations to them and will inform all parties of their decision within five working days. The committee/Head of School will be responsible for ensuring that the decision is one taken on reasonable grounds and is fair.
- 10.8 If the committee/ Head of School believe that further investigations are required the hearing may be adjourned so that other information can be sought. Any further evidence produced as a result of these investigations will be shared five working days prior to the date of the reconvened hearing. The employee will be given the opportunity to respond to any further evidence produced as a result of these investigations.
- 10.9 Where an employee is persistently unable, or unwilling without good cause, to attend a disciplinary hearing the employer shall consider all the facts and come to a reasonable decision on how to proceed. Where an employee continues to be unavailable to attend a meeting the employer may conclude that a decision will be made on the evidence available.

11. HEARING OUTCOMES

11.1 No Sanction

If, after hearing all the relevant facts of the case, the decision of the Committee / Head of School is that no sanction is to be issued, this must be communicated in writing to the individual.

11.2 Verbal Warning

In cases of minor misconduct, a verbal warning may be issued. The warning will be expunged from the disciplinary record after the completion of six months' satisfactory service from the date of confirmation of the warning. The employee should be informed of the potential consequence of further misconduct.

11.3 Written Warning

In cases of misconduct, employees may be given a written warning. The warning will be expunged from the disciplinary record after the completion of nine months' satisfactory service from the date of confirmation of the warning. The employee should be informed of the potential consequence of further misconduct.

11.4 Final Written Warning

If serious misconduct occurs or there is no improvement following the issue of a written warning, a final written warning may be issued. It will make clear to the employee that any further misconduct may result in dismissal. This warning will be expunged from the disciplinary record after the completion of twelve months' satisfactory service from the date of confirmation of the warning.

- 11.5 In exceptional circumstances the term of a formal disciplinary warning may be up to twice the period stated above. The Head of School or governors exercising this discretion should make clear to the employee the circumstances which it is felt justify an extension. The employee may, of course, appeal against this part of the decision.

11.6 Dismissal

11.6.1 Dismissal with Notice

Dismissal on contractual notice can be given for a disciplinary offence (other than an act of gross misconduct) committed or discovered during the period of a live Final Written Warning (even if the Final Written Warning relates to a different type of misconduct). For the avoidance of doubt the notice commences immediately and does not await the outcome of any appeal.

11.6.2 Summary Dismissal

Dismissal without notice or compensation (also known as Summary Dismissal) will only occur if an act of gross misconduct has been committed or the trust and confidence required between the employee and the school has been destroyed. For the avoidance of doubt the dismissal takes effect immediately and does not await the outcome of any appeal.

- 11.7 Confirmation of the decision, whether a warning or dismissal, will be given in writing to the employee and his or her representative within five working days of the disciplinary hearing. It will explain the reasons for the disciplinary action, indicate the period of time, where appropriate, after which a warning will be expunged from the employee's file, and advise the individual of his or her right of appeal.
- 11.8 In the event that there are no further concerns arising or incidents of a similar nature during the live warning period, a warning will be expunged. If that is not the case then the Head of School will consider further action in line with these procedures.
- 11.9 There is no fixed limit to the number of warnings which may be given; nor should any warning necessarily be more severe than that issued in respect of a previous offence. In some circumstances it may well be reasonable to issue a warning less, or no more severe, than that given previously.

12. APPEALS PROCEDURE

- 12.1 Notice of any appeal against a warning or dismissal under this procedure must be given by the employee within five working days of the receipt by the employee of written confirmation of the committee/ Head of School's decision. The grounds of appeal should be clearly indicated.
- 12.2 An Appeal Committee will be convened without unreasonable delay and the employee will be invited to attend with ten working days notice.
- 12.3 Any appeal against a decision by the Disciplinary Committee/ Head of School shall be referred to the Governor Appeals Committee. This committee will comprise three governors who have not been part of any earlier decision. Where a matter is to be referred to a Governor Appeals Committee and the governing body is unable to meet the requirement for three governors to be present, the Appeals Committee may comprise two governors.

- 12.4 The Chair of the Disciplinary Committee/ Head of School will present all relevant information that was considered when the decision was reached, to the Appeals Committee.
- 12.5 Both parties may provide any additional information that may have been found and is relevant to the decision of the Disciplinary Committee. However such material should be submitted no later than three working days before the appeal hearing so the papers can be distributed and read in advance.
- 12.6 The Appeals Committee may allow or disallow the appeal or vary the decision appealed against but the pursuance of an appeal will not result in any greater sanction for the employee than that being appealed against.
- 12.7 The Appeals Committee will give thorough consideration to all the information presented to them and will inform all parties concerned of their decision in writing within five working days.
- 12.8 There will be no further right of appeal.

13. REFERRALS

The facts of any relevant case will be referred to the Disclosure and Barring Service or other relevant organisation as required, for their consideration.

Appendix

1. Disciplinary Hearing Procedure
2. Disciplinary Appeal Hearing Procedure

Appendix I

PROCEDURE AT DISCIPLINARY HEARING

1. Management's Opening Statement of Case.
2. Questions of Management's Opening Statement by the Employee and/or the Representative.
3. Questions by the Disciplinary Panel and/or their Adviser to Management
4. Questions by Management of its Witness(es).
5. Cross-Examination by the Employee or their Representative of Management's Witness (es).
6. Questions by the Disciplinary Panel and/or their Adviser.
7. Re-Examination of Witness (es) by Management.
8. Employee's Opening Statement of Case.
9. Questions of the Employee's Opening Statement by Management.
10. Questions by the Disciplinary Panel and/or their Adviser to Employee.
11. Questions by the Employee or the Representative of his/her Witness (es).
12. Cross-Examination by Management of the Employee's Witness (es).
13. Questions by the Disciplinary Panel and/or their Adviser.
14. Re-Examination of Witnesses by the Employee or the Representative.
15. Summing Up by Management.
16. Summing Up by the Employee or the Representative.
17. Disciplinary Panel retires to deliberate.
18. Decision given in writing within 5 working days.

Appendix 2

PROCEDURE AT DISCIPLINARY APPEAL HEARING

1. **The employee (or representative) will outline his/her case for appeal.**
2. **The deciding officer (or their adviser) may ask questions of the employee.**
3. **The appeals panel may ask questions of the employee.**

Witnesses

4. The employee will call his/her first witness who will give evidence.
 5. The deciding officer (or their adviser) may question the witness.
 6. The appeals panel may question the witness.
 7. The employee (or their representative) may re-examine his/her witness.
 8. The witness will leave the meeting unless required to remain by the chair of the appeals panel.
 9. The procedure relating to the first witness will then be repeated for any further witnesses called by the appellant.
10. **The deciding officer (chair of panel who made previous decision) will outline the response.**
 11. **The employee (or their representative) may ask questions of the deciding officer.**
 12. **The appeals panel may ask questions of the deciding officer.**

Witnesses

13. The deciding officer will call his/her first witness who will give evidence.
 14. The employee (or their representative) may ask questions of the witness.
 15. The appeals panel may ask questions of the witness.
 16. The deciding officer (or their adviser) may re-examine his/her witness.
 17. The witness will leave the meeting unless required to remain by chair of the appeals panel.
 18. The procedure relating to the first witness will then be repeated for any further witnesses called by the deciding officer.
19. **The employee (or their representative) will sum up his/her case.**
 20. **The deciding officer (or their representative) will sum up his/her case.**
 21. **Both parties will be advised at the end of the hearing:**

That detailed consideration is needed and a decision will be communicated within seven days of the hearing (5 working days)