



Mayflower  
Community  
Academy

## Disciplinary Policy and Procedure

### VERSION CONTROL SHEET

POLICY NAME: Disciplinary Policy and Procedure

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July 2013		July PSG	New policy
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Disciplinary Policy and Procedure

## CHANGES

1<sup>st</sup> March 2009: Policy Implemented

June 2010: Styling revised in line with corporate guidelines

October 2010: Minor amendments

June 2012: Updated examples of gross misconduct

Contacts

If you have any questions regarding this policy please contact the Schools HR Adviser.

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## SECTION A: DISCIPLINARY POLICY

### 1 POLICY STATEMENT

The purpose of this policy is to apply Mayflower Community Academy adopted disciplinary procedure in a fair and consistent manner to all employees of the academy.

### 2 SCOPE OF POLICY

This policy and procedure applies to Mayflower Community Academy employees employed under the provisions of the following negotiating bodies as amended locally:

- JNC for Youth and Community Workers
- NJC for Local Government Services
- Employees on Soulbury and Youth and Community terms and conditions
- School Teachers' Pay and Conditions Review body

This procedure does not apply to employees who are on a probationary period. Separate guidelines for this group are given in the Mayflower Community Academy Probationary Policy.

In addition, this procedure does not apply in the following situations:

- Termination of a fixed term contract
- Dismissal due to redundancy (See School's Redundancy Policy and Procedure)
- Early retirement or retirement on the grounds of efficiencies of the service.
- Dismissal for "some other substantial reason", for example where employee is temporarily replacing another employee who is absent from work on maternity leave or secondment
- Dismissal for breach of a statutory enactment
- Addressing issues relating to capability see Mayflower Community Academy's Capability Policy and Procedure.

Guidance on the above situations can be sought from your School's HR Adviser.

However, appeals against dismissals for the above reasons will be heard in accordance with the Appeal hearing procedure in Appendix D.

The Governing Body has delegated to the Head Teacher authority to take disciplinary action in all cases except those involving possible dismissal.

References to 'Line Manager' contained in this Policy could, depending on the circumstances, be any senior member of staff required to perform a role within the disciplinary process. It could also refer to a governor, who for example, is required to perform a role in relation to dealing with an issue involving the Head Teacher, Principal or other staff member where it is felt appropriate.

## Conduct outside work

Misconduct or criminal offences that have occurred outside of the workplace may be dealt with under these procedures if the employee's conduct or activities:

- Make them unsuitable for the job they are employed to do; and
- If it is of such a nature as to have the potential to cause serious damage to the academy or authority's reputation.

In these circumstances, it is important to seek advice from School's HR Adviser.

## 3 AIMS

The disciplinary process is designed to help and encourage employees to achieve and maintain acceptable standards. The purpose of a formal procedure is to ensure that when disciplinary action needs to be taken it is both fair and reasonable.

This Disciplinary Policy and Procedure fulfils the statutory requirements laid down by Government. The Governing Body have a legal requirement under the Dispute Resolution procedure set out in the Employment Act 2002 and to have disciplinary procedures in place.

The Disciplinary Policy and Procedure comply with best practice as detailed in the Advisory Conciliation and Arbitration Service (ACAS) Codes of Practice and advocated by the Chartered Institute of Personnel and Development.

The Disciplinary Policy and Procedure are designed to promote equality, fairness and consistency within the academy.

The Disciplinary Policy and Procedure takes account of the TDA Professional standards for teachers and the ACAS Code of Practice and the views of recognised Professional Associations /Trade Unions.

## 4 RESPONSIBILITIES

### 4.1 Employees

All employees within the academy have a responsibility to make sure they can access and understand the rules governing their performance and behaviour in the workplace. They also have a responsibility to endeavour to meet these standards as a representative for and employee of the academy.

There is a requirement for employees to declare any conflict of interest that arises if they are involved in disciplinary matters

### 4.2 Management

The Governing Body, the Head Teacher/Principal and all employees with line management duties are responsible for setting and maintaining standards of performance within the academy. They are also

responsible for ensuring that disciplinary rules are in place and that employees are aware of and have access to these rules.

#### **4.3 The Governing Body and Head Teacher/Principal**

The Governing Body and Head Teacher/Principal has a responsibility to avoid discrimination, improve communications and promote positive employee relations throughout the academy both with employees and their representatives.

## **SECTION B: DISCIPLINARY PROCEDURE**

### **1 PURPOSE**

The purpose of this disciplinary procedure is to give guidance on the standards of behaviour and conduct expected of employees and how to deal with breaches of those standards.

This procedure is designed to promote fairness and consistency of treatment in disciplinary matters and emphasise and encourage improvement in individual conduct. This procedure is therefore viewed as remedial rather than punitive.

This procedure provides a mechanism to deal fairly and equally with any allegation of misconduct.

Breaches of these rules may result in a variety of outcomes which, in extreme cases, include dismissal. Therefore, guidance in this area is necessary via this document.

This document fulfils the statutory requirement to comply with both the Education Act and Employment Act 2002. It also conforms to ACAS Codes of Practice which reinforce and encourage good employee relations.

This procedure forms part of the Contract of Employment for employees.

In summary the procedure has broadly two types of action, one informal (Section 2.0) and the other formal (Section 3.0).

### **2 INFORMAL ACTION**

#### **2.1 The reason for informal action**

The Governing Body, the Head Teacher and employees with line management responsibility are encouraged to deal with low level and minor issues of conduct informally, in the first instance.

#### **2.2 The benefits of informal action**

Minor breaches of discipline can often be dealt with informally with benefits to the employee and the Academy. The advantage of this approach would be to resolve the problem or correct the inappropriate behaviour as quickly as possible to reduce the risk of disruption of a team, de-motivation

and absenteeism for example.

However, the situation should be monitored and reviewed and failure to improve or a repetition of the offence may lead to formal action being necessary. (Please refer to the Academy's Performance Management & Managing Attendance Policies).

Informal action can take the form of a caution or a reprimand, which may be sufficient to correct an employee's behaviour.

### 2.3 Informal process

Informal action may not always be practical, possible or appropriate. For example, it would be inappropriate to respond to an allegation of gross misconduct using informal methods.

Informal action may take the form of discussions between the line manager (who may be the Headteacher or Principal) and an employee, to establish the facts of the case. If during this informal discussion, it becomes apparent that formal action may be necessary, the line manager must adjourn the meeting, tell the employee why the meeting has stopped and a new formal meeting will be arranged for another time, which will be mutually agreed, which is when the process then becomes formal at that meeting.

The reason for this adjournment is that an employee has a statutory right to be represented at a formal meeting, (Dispute Resolution regulations 2004) and the employee must be notified of this right and be given every opportunity to arrange for a representative.

Accompaniment at an informal meeting can be a full time trade union official or a work colleague. Whilst there is no statutory right for formal representation at an informal meeting, an employee may wish to bring a companion with them for support. Reasonable requests should be considered, particularly in the case of vulnerable or special groups. However the line manager reserves the right to refuse requests. (See Section 4.7 on 'Right of accompaniment').

Informal meetings are by their nature unofficial. However the line manager may make file notes or diary entries. These notes may be subsequently used as part of an on-going fact finding exercise.

### 2.4 Possible outcomes of informal action

There may be a number of possible outcomes from informal action, including the following:

No further action is necessary

Objective setting to improve individual conduct or performance including specific, measurable, achievable, relevant and time-specific objectives set by the line manager and discussed and agreed with the employee. (Please refer to the Academy's Performance Management and Capability Review and Procedures).

Training needs may be identified, and a programme of learning and development may be

implemented, with consultation and support from appropriate training resources. The timescale for this training programme will depend on individual circumstances of each case.

An occupational health referral for consultation, counselling or medical assessment may be appropriate as part of the school's duty of care to employees.

Monitor and review the situation, as part of regular supervision and performance management by the Head Teacher

Suspension with pay, temporary redeployment to another post or area of work may be considered pending the outcome of a formal investigation or disciplinary action.

### 3 FORMAL ACTION

Disciplinary action will not be taken until the allegations have been investigated. Notes of all meetings should be taken and kept at all stages of the formal process.

#### 3.1 Suspension

Suspension from work is not a disciplinary sanction but it is a measure which should only be used after careful consideration and under appropriate circumstances.

However, in certain situations it may be necessary to suspend an employee from their duties pending a formal investigation or a formal disciplinary hearing. For example, if an employee's continued presence in the workplace puts themselves or others at risk of if an employee's presence may hamper or compromise and investigation process.

Suspension is always on normal contractual pay and is not in itself a disciplinary sanction. Normal contractual pay is calculated in accordance with National Conditions of Service. Advice should be sought from the School's HR Adviser before seeking to change any pay arrangements that are already in place for example car user allowance, overtime, bonus etc.

A decision to suspend an employee will be taken by the Head Teacher/Principal, designated Governor, or panel of the Governing Body, who will arrange to meet with the employee and explain why suspension is being considered.

Any responses the employee may wish to give as to why they should not be suspended should be considered prior to a decision being taken. An employee should be given the opportunity to be accompanied by a friend or union representative at this meeting.

In exceptional circumstances an employee may be instructed by their line manager to leave the workplace immediately and to stay away on normal contractual pay until further notice providing:

- In the opinion of the line manager in consultation with their School's HR Adviser the employee's continued presence would be detrimental to the Academy or Local Authority's interests and



- No Head Teacher/Principal, designated Governor or Panel of the Governing Body, who has the authority to implement suspension from duty is available and
- The instruction is reported to the Head Teacher/Principal, designated Governor or Panel of the Governing Body as soon as possible thereafter so that he or she can determine whether the employee is to be formally suspended or reinstated in the workplace.
- This confirmation of suspension letter must be sent by the Head Teacher/Principal, designated Governor or Panel of the Governing Body within three working days of the suspension date and the letter sent by special delivery to ensure receipt.

Where the employee concerned is the Head, the Chair of Governors will consult with the School's HR Adviser before deciding whether to suspend.

### 3.2 Alternatives to suspension

Wherever possible, consideration should be given to temporary redeployment as an alternative to suspension.

The benefits of temporary redeployment are that it keeps the employee actively engaged in work during a period of uncertainty.

Maintaining contact with the Academy through temporary redeployment may assist that individual with access to the Trade Union representative and help with case preparation should formal disciplinary action ensue.

The Head Teacher/Principal, designated Governor or Panel of the Governing Body should document in a letter to the employee that suspension was considered but outline the reasons why it was considered inappropriate.

### 3.3 Terms of suspension

If the Head Teacher/Principal, designated Governor or Panel of the Governing Body decides to suspend an employee, they must state the terms of suspension in writing to that employee.

The content of this letter will depend on individual circumstances but broadly should include the reason for the suspension and what the employee should and should not do during this period. For example, the employee will be prohibited from returning to their place of work without pre-arranged accompaniment. They must not speak to work colleagues, Governors, parents or students about the case, unless this person has been assigned as a support person or a representative for the employee.

If an investigation has been commissioned, the suspension letter may also include basic information about the investigation, for example, who has requested the investigation (the Commissioning Officer), who is undertaking the investigation (the Investigating Officer), what will be investigated, how that investigation will be undertaken and what methods will be used to gather evidence such as witness interviews, Internal Audit reports or relevant performance management documentation.

This confirmation of suspension letter must be sent by the Head Teacher/Principal, designated

Governor or Panel of the Governing Body within three working days of the suspension date and the letter sent by special delivery to ensure receipt.

If formal disciplinary action is recommended as a consequence of an investigation, the disciplinary hearing will normally take place as soon after the investigation has concluded as reasonably practicable.

### **3.4 Situations which may warrant suspension or redeployment**

It would be appropriate to suspend an employee from their substantive post in the following circumstances:

Allegations of gross misconduct where an employee's presence in the workplace may hinder or compromise the quality of an investigation into those allegations.

An employee's presence in the workplace places them and/or others at risk.

Alleged or committed criminal activity outside the workplace. May result in suspension.

Where proven criminal offences impact on an individual's ability to do their job, for example imprisonment, action may be taken only after careful consideration of all the facts of the case.

Head Teacher/Principal or committee of the governing body reserves the right to treat alleged or committed criminal offences according to individual circumstances.

An allegation of misconduct or gross misconduct against a Trade Union Representative, pending discussions with and the availability of a full time official.

Suspensions due to allegations of theft or misappropriation of Academy property must be reported to the Internal Audit Department within twenty-four hours of the suspension. Where external investigations are being pursued, for example by the Police, the Local Authority Legal Department should be notified. Please seek further guidance from your School's HR Adviser.

The situations above are purely illustrative and the list is not exhaustive. Head Teacher/Principal or committee of the Governing Body reserve the right to suspend according to individual circumstances.

### **3.5 Employee requests of access during suspension**

During the suspension period, an employee must remain available to co-operate with ongoing investigations which may require their attendance. The employee will have a right to representation at such an investigation interview.

If an employee is suspended and the terms of their suspension do not permit them to enter Academy or Council premises, they may be able to attend as a witness in a disciplinary or grievance hearing or appeal in other cases not related to their suspension.

If formal disciplinary action is an outcome of the investigations, the employee on suspension should be given every opportunity to fully prepare their case. This may involve the release of relevant documentation or access to Academy employees as potential witnesses at a disciplinary hearing.

A support person for example a Local Authority HR Adviser may be assigned to an employee on suspension or temporary redeployment, depending on the circumstances of the case. This person can guide and assist the employee on welfare and procedural matters and be a focal point for questions or queries.

A senior academy colleague who is unconnected with the issue will be given responsibility for maintaining contact with the member of staff during the period of suspension.

An employee on suspension may be considered for inclusion on a list relating to the protection of vulnerable groups, for example Protection of Children Act List (POCAL) in the light of the Protection of Children Act 1999. Further guidance can be sought from the Local Authority Safeguarding Officer.

An employee on suspension should be encouraged to get in touch with their trade union or their professional association; and given the contact details of the Counselling Service.

### 3.6 Monitor and review

The terms of reference around the suspension or redeployment should be regularly monitored and reviewed by the Principal/Head Teacher, Panel of the Governing Body, and adjustments made where appropriate.

For example, reasonable requests by the employee or their representative for information to help them prepare their case for a potential disciplinary hearing will be considered. Further guidance can be sought from the School's HR Adviser.

If the terms of the arrangements are broken by the employee, management reserves the right to take further action that may be necessary, for example considering suspension if an employee is currently on redeployment. The employee must be advised of this change in writing. Please seek further guidance from your School's HR Adviser.

A suspension can only be lifted by the Governing Body. Governors may formally delegate this responsibility to a Panel. The Panel with delegated responsibility shall only be provided with sufficient information to enable them to reach a decision and due regard should be given to the need for confidentiality of individuals involved in the circumstances of the suspension.

## 4 INVESTIGATIONS

### 4.1 Purpose

The purpose of an investigation is to undertake a fair and objective enquiry into a specific allegation or allegations against an Academy employee.

Disciplinary action will not be taken until the allegation or allegations have been investigated, unless in exceptional circumstances.

The Commissioning Officer will commission an investigation and specify the terms of reference. The Commissioning Officer will usually be the Headteacher/Principal, designated Governor or Panel of the Governing Body, who will appoint an Investigating Officer(s).

As an outcome of the investigation, a report will be produced by the Investigating Officer(s) and be sent to the Commissioning Officer for consideration. The Commissioning Officer will then decide what action, if any, to take. (See section 4.9 on potential investigation outcomes). Further guidance can be sought from the School's HR Adviser.

#### 4.2 Scope of the investigation

An investigation is not a disciplinary hearing. An employee at the centre of the allegation and any witnesses should be reminded of this before interviews commence.

Witnesses should be reminded that one of the outcomes of the interview is that the information given may be used at a disciplinary hearing.

#### 4.3 Timescales

Interviews should be timely with as little disruption to all parties as is reasonable and practicable. The advantage of investigating close to the alleged incident/ issue and source of the allegation is to minimise the risk of evidence contamination or compromise witness recall of events.

#### 4.4 Vulnerable, disabled, children/pupils or other groups

Vulnerable individuals should not be interviewed unless essential and then only in the presence of a representative or companion of their choosing, for example a social worker or parent. Arrangements should be made to accommodate special groups for example using the services of an interpreter or Braille translation.

Reasonable adjustments should be made for special groups or employees who have a disability, in accordance with the Disability Discrimination Act 2005 for example providing wheelchair access for a disabled employee.

Cultural and/ or gender issues should also be given consideration, for example making the services of an interpreter available for employees.

If it is necessary to interview pupils formally, their parents/guardians must be advised, and consent must be obtained.

A parent/guardian may accompany a child during the interview but must not significantly contribute to the interview.

The employee's representative will have the opportunity to be present at an interview with a pupil to avoid the necessity of interviewing the pupil more than once as long as this is not prejudicial to the disclosures likely to be made by the pupil. If it is thought the presence of another adult may be intimidating, the employee's representative will be provided with a transcript of the interview.

Wherever possible, a factual record of the discussion will be agreed to avoid the child being called as a witness at any subsequent disciplinary hearing.

#### **4.5 Child Protection issues: Incidents and/or allegations involving a child or young person under the age of 19 years.**

Children are protected from physical, sexual, verbal and emotional abuse under several statutes including The Children Act 1989. This Act expressly lays down specific procedures to be followed in circumstances where an incident has occurred and/or allegations have been made that an employee has abused a child.

In these circumstances, it is recommended that the Head Teacher/Principal immediately seek advice from the Authority's Safeguarding Officer and refers to section 14 of this document.

It is essential that Principals/Chairs of Governors have due regard to the South West Child Protection procedures and Plymouth Local Child Protection Guidance and act in accordance with these documents

If the investigation is taking place following the completion of a police investigation, it may be possible to obtain copies of police witness statement with the approval of the individual(s) concerned.

#### **4.6 Confidentiality**

The importance of confidentiality is paramount throughout the investigation and Investigating Officers should ensure that everything discussed will be treated in strictest confidence. A request by an Investigating Officer for an employee to participate in an investigation is a reasonable management request. However, in some situations, a witness statement could be provided as an alternative.

#### **4.7 Employee failure to co-operate**

An employee at the centre of a potential allegation or allegations must co-operate with the investigating officer as part of the information gathering process. Wilful refusal to co-operate with an investigation is a disciplinary offence in itself. The implications of failing to co-operate or wilfully hinder an investigation may lead to further action being taken against the employee.

#### **4.8 Right of accompaniment**

All employees being interviewed as part of a formal investigation process have the right to be represented at this interview by a recognised Trade Union official or professional representative or work colleague. (See section 2.3.4 for further information on accompaniment at informal meetings).

The definition of the trade union official, according to the Employment Act 2002 is "someone who is employed by a trade union or an elected union official who has been certified by the union as having

undergone suitable training or having the necessary experience to act as the worker's companion".

Requests for other categories of companion other than those specified in section 4.7.1 above, for example a friend or relative will be considered but the right is reserved to decline such requests for example in the case of a request for a solicitor to be present.

Representation at a formal meeting will be restricted to one person only, except in exceptional circumstances. Please seek further guidance from your School's HR Adviser.

Where a Diocesan representative is present his/her role should be clarified at the outset.

#### **4.9 Investigation report**

Once an investigation is concluded, a report is generated. This document includes a summary of why the report was commissioned, it explains who the Commissioning Officer and the Investigating Officer are, the terms of reference around the investigation and the methodology used to gather information. A conclusion will summarise the findings of the investigation. The Commissioning Officer will consider a range of outcomes in response to the allegations and the investigation findings (see section 4.9 below) and decide what further action, if any, to take.

The report shall be factual and specific, focused on the terms of reference. It should contain comprehensive notes and reports from other sources if appropriate, for example PCC's Legal Services or Internal Audit. Witness statements should be signed and dated, and notes taken at all formal meetings. The report may be used as part of a bundle of documents at a disciplinary hearing.

#### **4.10 Potential Investigation Outcomes**

##### **4.10.1 No case to answer**

It may be that having conducted a full investigation, the Commissioning Officer decides that there is no foundation to the allegations and that there is consequently no case to answer.

##### **4.10.2 Remedial action**

Such as further training and supervision or a referral to occupational health or counselling. It may also involve transferring the employee to another job, however this can only occur if another post is identified and the employee agrees to the move. Further guidance can be sought from the School's HR Adviser.

##### **4.10.3 Mediation**

A formal structured process of mediation, requiring employee involvement to decide a mutually agreeable way forward or solution. This can be undertaken by the employee's line manager/ Supervisor or if appropriate, another manager not previously involved in the case.

##### **4.10.4 Further investigation**

During which the terms of the employee suspension or temporary redeployment may need to be reconsidered or redefined.

#### 4.10.5 Formal disciplinary action

If formal disciplinary action is recommended by the Commissioning Officer, the formal disciplinary procedure will apply (see Section 5.0 below) and the matter will be referred to the Head Teacher/Principal/Governors Staffing Panel.

### 5 FORMAL DISCIPLINARY PROCEDURE

The Academy's adopted formal disciplinary procedure complies with the requirements of the Employment Act 2002, Education Act and ACAS Codes of Practice.

#### 5.1 Inform the employee in writing to attend a meeting

The first stage of the formal process is to inform the employee in writing that they are required to attend a disciplinary hearing before either the Head Teacher/Principal or Governors Staffing Panel, including the time, date, and location of the hearing. This letter should also contain the following:

Outline of the allegation or allegations, specifying the gravity of these allegations (misconduct or gross misconduct) and the consequences or possible outcomes if the allegations are proven at a disciplinary hearing. For example, in proven cases of gross misconduct, one of the potential outcomes is dismissal.

The employee's statutory right to be represented at a formal disciplinary hearing by a recognised Trade Union representative or work colleague.

That notification of attendance will be sent to the employee a minimum of five working days prior to the hearing and the letter should be sent by special delivery.

Employees should also be reminded that if they fail to attend the hearing without reasonable notice and without good reason, it will be held in their absence. In these circumstances the employee must be advised they can be represented in their absence by a Trade Union representative or work colleague and/ or provide a written submission. See section 6.0 for dealing with non-attendance.

A formal hearing can be before either the Head Teacher/Principal or a panel of governors (minimum of 3 none of whom will have had direct involvement in the case) acting as the Governors Staffing Panel, depending on the circumstances:

- If the Head Teacher/Principal has not undertaken the role of Investigating Officer, s/he may hear the matter unless a possible outcome may be dismissal.
- The Governors Staffing Panel may hear charges of gross misconduct and/or where the outcome could be dismissal. An LA representative must also be present in these circumstances.
- The matter can be heard by the Governors Staffing Panel where either the Head Teacher/Principal or the employee believe it will provide a more impartial and/or objective forum.
- The Governors Staffing Panel will hear the matter if the Commissioning Officer(s) are of the view that the circumstances warrant it.

## 5.2 Hold the disciplinary hearing

A detailed sequence of events (appendix C and D) should be followed for all disciplinary and appeal hearings.

Procedural issues and objections can be raised using this sequence and it allows for adjournments so the facts can be carefully considered. The aim of this sequence is to promote transparency, fairness and consistency in the application of the Disciplinary Policy and Procedure. A note taker will be in attendance for the hearing.

The Investigating Officer (s) will usually put forward the case against the employee at a disciplinary hearing.

A Local Authority HR Adviser will be present to advise the Panel at the disciplinary hearing.

A Chair will be nominated from amongst the panel members.

Requests for an adjournment by the employee, their representative or management should be made to the Chair and the frequency should be reasonable and appropriate. Adjournments should not be used as a way of avoiding questions.

The Panel may wish to adjourn to deliberate the facts of the case before reaching a decision, consider procedural issues or matters for further clarification. The employee's personnel file may be examined during an adjournment or other sanctions which are not time-expired may be considered, if relevant to the current case.

## 5.3 Inform the employee of the decision

The employee will be notified by the Chair their decision verbally on the day, if possible.

This decision will be confirmed in writing within five working days of the meeting and sent to the employee by special delivery.

The confirmation letter must state the details of the findings including the reason for the sanction, any improvement that is expected or required and specify the time scales for improvement, if appropriate. The letter should also give guidance on how to appeal. (See section 5.4 below on notifying the employee of their right of appeal).

The situation should be monitored and reviewed regularly after the disciplinary hearing and any further issues identified.

Failure to improve could lead to further disciplinary action which may ultimately lead to dismissal.

If compulsory transfer or demotion is incorporated into the sanction, the employee must be advised of this verbally at the hearing and informed of this action in the confirmation letter.



#### 5.4 Notify the employee of their right of appeal

An employee has a right of appeal against a disciplinary decision and details of how to appeal should be incorporated in the confirmation of decision letter. (See section 5.3.3 above for details on what should be included in the confirmation letter).

Requests for an appeal should be made in writing to the Chair of Governors within five working days from receipt of the disciplinary decision letter.

The date of the appeal hearing will be agreed with the employee within ten working days of receipt of the appeal letter.

Wherever reasonably practicable, appeals will normally be heard within four weeks of the appeal being lodged.

The appeal letter should fully state the grounds on which the employee is appealing against the disciplinary decision. Appeals will be considered on the following grounds:

- The procedure i.e. did a procedural fault(s) affect the fairness of the decision
- The facts i.e. were the facts considered not relevant? Were the facts not substantiated? Are there new facts to be considered since the original decision?
- The disciplinary penalty i.e. were all the comments of the employee and all relevant issues explored; are there new surrounding or mitigating circumstances that could affect the decision?

Appeal hearings will be structured around the grounds of the employee's appeal and will not be a full re-hearing of the case.

Appeals will be heard by a Governors Appeal Panel containing at least an equivalent number of governors to the Governors Staffing Panel.

The appeal panel will consist of governors who have not taken part in the original decision, one of whom will be nominated to act as Chair.

A Local Authority HR Adviser will be present to support the Appeal Panel. If dismissal is a possible outcome, a representative of the Director of Children's Services has the right to attend the Appeal and give advice, which must be considered.

The appeal may result in a variation or cancellation of the original decision. The decision of the Appeal Panel will be final.

Notification of the Appeal Panel's decision and reasons for that decision will normally be given verbally to all parties concerned and will always be communicated to the employee with five working days from the date of the disciplinary hearing. This letter should be sent to the employee by special delivery.

Where the outcome is to uphold the appeal, the Chair will notify the School's HR Adviser in writing within five working days, giving the reason for the determination. HR will rescind the notice for community and voluntary controlled schools. In the case of voluntary aided and foundation schools, the Chair of Governors will rescind the notice of dismissal.

## 6 DEALING WITH NON-ATTENDANCE

It is a legal obligation to rearrange a disciplinary meeting once only if the employee or their representative is unable to attend.

In accordance with ACAS guidance, the deferment of the hearing need only be for a maximum of five days.

The employee must take all reasonable steps to attend the meeting. See section 5.1.5 above.

Sickness may be a reason given for non-attendance but is only valid if the employee is too ill to attend a formal meeting or disciplinary hearing. An employee may be too sick to work but fit enough to attend such a meeting. An occupational health referral must take place if the employee is certificated as sick by their general practitioner or specialist.

## 7 DISCIPLINARY SANCTIONS

### 7.1 No case to answer

This outcome is unlikely if a full and thorough investigation has been undertaken. However, if new evidence comes to light that was not previously available then it may be a possible outcome. In this situation, no further action will be necessary and any reference to disciplinary action is removed from the employee's file.

### 7.2 Written or final written warnings

A written warning will be valid for twelve months and will be time expired after this period, providing there is no repetition of the offence. In accordance with recommendations contained within the Warner Report relating to staff employed in sensitive posts all warnings should remain on the employee's personal file indefinitely. This is likely to apply to all academy employees where an enhanced CRB check is required. In such cases, Warner Report, Recommendation 19, stipulates employers need to keep a full record of disciplinary offences on a personal file for the purpose of giving a reference in an appropriate situation.

In cases where capability or conduct is at the limit of acceptable standards laid down, the warning may be extended beyond twelve months. If such a decision is taken the employee must be notified in writing of the extension and the reasons for increasing the timescale. The time limits specified for written and final written warnings can be modified in exceptional or extenuating circumstances.

### 7.3 Dismissal (with notice or pay in lieu of notice)

In cases of serious misconduct (see Appendix B) or repetition of misconduct the decision may be taken

to dismiss with notice.

This sanction may be used in cases where a previous written warning has not resulted in the required level of improvement.

This sanction may require the employee to work their notice period or be paid in lieu of notice, giving an earlier termination date.

No employee will be dismissed without notice for their first offence except in cases of gross misconduct.

#### 7.4 Summary dismissal (without notice)

This sanction will be administered in cases of proven gross misconduct (see Appendix B).

#### 7.5 Reporting Obligations

Lists relating to the protection of vulnerable groups will be updated in the light of the decision not to re-engage for example Protection of Children Act List (POCAL) in accordance with the Protection of Children Act 1999.

The Authority is further required to report teachers and 'workers with children or young persons' to the Department for Children Schools and Families (DCSF) if s/he is dismissed for misconduct or resigns where s/he would have been dismissed or considered for dismissal on the grounds of misconduct if s/he had not resigned.

If the decision of the Appeal Panel is to recommend dismissal, the Chair should formally communicate this to the LA. The Chair will notify the School's HR Adviser in writing, within 5 days, giving the reason for the determination. HR will issue notice of termination to dismiss on behalf of the LA in Community and Voluntary Controlled schools within 14 days. In the case of Summary Dismissal this will be with immediate effect.

In the case of voluntary aided and foundation schools, the Chair of Governors will issue notice of dismissal within 14 days. In the case of Summary Dismissal this will be with immediate effect.

## 8 OTHER REMEDIES

In addition to the above sanctions (section 7.1 to 7.4), a number of other remedies may be considered by the Disciplinary Chair or Appeal Panel, for example:

- Redeployment that will take effect from the date of the disciplinary confirmation letter.
- Withhold incremental progression.
- Demote an employee within the same job with no protection of wages.
- Repayment of fraudulent claims, in accordance with Plymouth City Council's Financial Regulations.

## 9 DISCIPLINARY MATTERS RELATING TO A TRADE UNION OFFICIAL

Normal disciplinary standards apply to the conduct of Trade Union Officials and Learning Representatives. However:

No disciplinary action will take place against a Branch Official, Steward, Learning Representative or Safety representative until a full time official of the Union concerned has been notified.

This does not prejudice management's right to suspend an employee on full pay pending an investigation, if such action is considered appropriate, as suspension is not a disciplinary sanction.

## 10 OVERLAPPING DISCIPLINARY AND GRIEVANCE ISSUES

During the disciplinary process an employee may only raise a grievance about disciplinary action when

- they do not agree that the disciplinary action taken or contemplated, for example dismissal, is due to their conduct or capability; and/or
- where the employee considers that the disciplinary action constitutes unlawful discrimination.

Where the grievance and disciplinary are unrelated:

Disciplinary and grievance matters should be kept separate, wherever practical and reasonable to do so.

Depending on the nature of the grievance another senior member of staff may be brought in to deal with the grievance case independently of the disciplinary case.

Under these circumstances the employee must be notified in writing of the delay and reasons given.

Where grievance and disciplinary matters are related and linked:

For cases where the employer is contemplating dismissal, for example in allegations of gross misconduct, the Complainant must be given the opportunity to appeal against the grievance outcome, in accordance with the Dispute Resolution Regulations 2004.

The grievance meeting and any subsequent grievance appeal meeting should take place before the disciplinary appeal hearing (or within the same meeting see 10.3.3 below). This may mean that disciplinary process may be delayed for a short period to resolve the grievance. The employee must be notified in writing of the delay and reasons given.

Whilst both issues can be dealt with at the same meeting, it will be difficult for the Complainant to appeal against the grievance outcome if they have been dismissed by the Authority at the same meeting. (Please seek further guidance from your School HR Adviser and refer to the grievance policy and procedure for more information on grievance matters).

Where the employee raises a grievance after the disciplinary appeal hearing, the full statutory grievance procedure should be followed unless the employee gives their written consent for the modified grievance procedure to be used.

## 11 NOTIFICATIONS TO PROFESSIONAL BODIES

The academy will report to the appropriate statutory or professional body any serious act of misconduct or gross misconduct where appropriate.

This document should be used in conjunction with the Guidance Notes for the Disciplinary Policy and Procedure that will be available on the intranet.

Please seek further guidance or information from your School's HR Adviser if necessary



## APPENDIX A: RECORD OF DISCIPLINARY ACTION

This form should be completed by the Chair of the Staffing Panel and forwarded to the School's HR Adviser, Windsor House. All information will be used for monitoring purposes and held in accordance with the Data Protection Act 1998 and employment legislation.

Section A and F are compulsory. Please complete Sections B-E where applicable.

Action relating to: (Please tick where applicable)	
Section B Suspension/ Alternative to Suspension	<input type="checkbox"/> Section C Disciplinary Tribunal <input type="checkbox"/> Section D Appeal <input type="checkbox"/> Section E Employment <input type="checkbox"/>
SECTION A	
Full Name:	Employee Pay No:
Home Address:	
Postcode:	School:
Job Title:	
Date when Continuous Local Government Service Commenced:	
SECTION B	
Date of Suspension:	
Date and Details of Alternative to Suspension:	
Potential Disciplinary Charge:	MISCONDUCT/GROSS MISCONDUCT

Potential Duration of Suspension or Alternative to Suspension:														
SECTION C														
Date when Investigation Commenced:														
Name of Investigating Officers:														
Nature of Allegations:														
Any part of the allegations relating to:														
<table> <tr> <td>Ethnicity:</td> <td>YES/NO</td> </tr> <tr> <td>Bullying/Harassment:</td> <td>YES/NO</td> </tr> <tr> <td>Disability:</td> <td>YES/NO</td> </tr> <tr> <td>Sexual Orientation:</td> <td>YES/NO</td> </tr> <tr> <td>Religion or Belief:</td> <td>YES/NO</td> </tr> <tr> <td>Age:</td> <td>YES/NO</td> </tr> <tr> <td>Other Discrimination (please state)</td> <td></td> </tr> </table>	Ethnicity:	YES/NO	Bullying/Harassment:	YES/NO	Disability:	YES/NO	Sexual Orientation:	YES/NO	Religion or Belief:	YES/NO	Age:	YES/NO	Other Discrimination (please state)	
Ethnicity:	YES/NO													
Bullying/Harassment:	YES/NO													
Disability:	YES/NO													
Sexual Orientation:	YES/NO													
Religion or Belief:	YES/NO													
Age:	YES/NO													
Other Discrimination (please state)														
Date of Disciplinary Hearing (if applicable):														
Name of those attending Disciplinary Hearing:														
Details of Disciplinary Hearing:														

Decision of Disciplinary Hearing:
SECTION D
Date of Appeal (if applicable):
Outcome of Appeal (if applicable):
Attended by:
SECTION E
Employment Tribunal Details (if applicable):
If applicable, has the Protection of Children Act List (POCAL) been advised: YES/NO
Date when advised:
If applicable, has the employee been put on the Undesirables Register: YES/NO



Date when entered:

Any procedural issues that require noting for future reference when up-dating the Academy's Policies and Procedures:

SECTION F

Equal Opportunities and Diversity Monitoring of Employee to be obtained from the HR Database:

Information obtained in this section will be used for equal opportunities monitoring in accordance with employment legislation.

Date of Birth:

Gender:

Ethnic Origin: (please tick applicable box)

White:	<input type="checkbox"/>	Irish	<input type="checkbox"/>	Other white background	<input type="checkbox"/>
British					
Mixed:		<input type="checkbox"/>	White and Black African	<input type="checkbox"/>	
White and Black Caribbean					
White and Asian			Any other mixed background		
Asian or Asian British:	<input type="checkbox"/>	<input type="checkbox"/>	Bangladeshi	<input type="checkbox"/>	<input type="checkbox"/>
Indian		Pakistani		Other Asian Background	
Black or Black British:	<input type="checkbox"/>	African	<input type="checkbox"/>	Any other black background	<input type="checkbox"/>
Caribbean					
Chinese or other ethnic group:	<input type="checkbox"/>		<input type="checkbox"/>		
Chinese		Other ethnic group			

Does the employee consider him/herself to be a disabled person: YES/NO

If yes, please tick box(es) applicable

Mobility Impairment

Hearing Impairment

Sight Impairment

Learning Difficulties

Other (please state):

Does this physical or mental impairment have a substantial and long-term adverse effect on the employee's ability to carry out normal day to day activities: YES/NO

What is the employee's religion: (please tick applicable box)

None  Hindu  Sikh  Christian

Jewish  Buddhist  Muslim

Any other religion or belief: (please state)

## APPENDIX B: LIST OF EXAMPLES OF POTENTIAL GROSS MISCONDUCT

The public is entitled to demand of an Academy employee conduct of the highest professional standard, and public confidence in his or her integrity would be shaken were the least suspicion to arise that they could in any way be influenced by improper motives. Failure to uphold such standards is considered to be potentially gross misconduct.

The following are examples only:

1. Stealing from the Academy, Authority or a colleague
2. Theft, dishonesty, fraud, misuse of Academy or property, or deliberate falsification of records
3. Sexual misbehaviour
4. Serious insubordination
5. Deliberate falsification of claims for financial reimbursement with the intention of obtaining from the Academy a payment to which the claimant is not entitled
6. Deliberate and/or malicious damage to Academy or property
7. Assault of any kind by an employee on any person
8. Knowingly breach financial regulations or security
9. Knowingly refuse to follow a reasonable formal legal management instruction
10. Serious negligence which causes unacceptable loss, damage or injury, or acting in a manner dangerous to others
11. Harassment intimidation or bullying of any kind including sexual or racial harassment
12. Publication or distribution of offensive material relating to race, sex, age or religion
13. Knowingly disclose matter of a confidential nature or break a trust to the disadvantage of the Academy
14. Failure to uphold the highest professional standard by the influence of improper motives
15. Unauthorised entry to computer records and deliberate misuse of the Academy or Council's computer resources and telephone services
16. Serious breach of Data Protection Policy and Guidelines
17. Obscene or indecent behaviour
18. Serious incapability through alcohol or being under the influence of drugs
19. Serious breaches of the Academy's Health & Safety Policy
20. Bringing the Academy or Authority into serious disrepute
21. Misuse of the Academy or Authority's property or name
22. Breach of confidence
23. Failure by an employee to report actual or suspected physical or sexual abuse or other inappropriate behaviour of a child or other vulnerable person by another employee or person.
24. Serious breaches of Professional Codes of Practice
25. Any failure to disclose any involvement with the police or courts including but not limited to existing (or pending) criminal conviction, caution, reprimand or final warning which in the view of the Council impacts on their ability or suitability to undertake their role"

This list is not intended to be exhaustive and there may be several other breaches of conduct that may be deemed to be misconduct or gross misconduct.

## APPENDIX C: SEQUENCE TO BE FOLLOWED AT A DISCIPLINARY HEARING

Documentation used at and generated by the disciplinary hearing will be circulated to members of the disciplinary panel, HR representative, and all relevant parties in advance of the hearing. This must include a list of the witnesses to be called by both the academy and employee's side at the disciplinary hearing.

The hearing will be attended by a Governors Panel (minimum of 3 Governors) and Adviser to the Panel, the Employee and their representative if required; and the investigating officer (s) who may be accompanied by an Human Resources Adviser (acting as 'management'); plus witnesses.

Sequence of Events:

- 1      Introductions  
Including procedural issues to be covered and confirmation of witness lists.
- 2      Management Case  
The manager or management's representative will put his/her case in the presence of the employee and/or representative and may call witnesses.
- 3      Cross Examination by Employee  
The employee or representative will have the opportunity to ask questions of the manager and/or witnesses on the evidence given by them.
- 4      Questions from the Panel  
The Panel and the Human Resources Adviser may ask questions of the manager and/or witnesses.
- 5      Employee Case  
The employee or representative will put his/her case including any mitigation in the presence of the manager and may call witnesses.
- 6      Cross Examination by Management  
The manager shall have the opportunity to ask questions of the employee and/or witnesses on the evidence given by them.
- 7      Questions from the Panel  
The Panel and their HR Adviser or nominee may ask questions of the employee and/or witnesses.
- 8      Summing Up  
The manager and/or adviser and the employee or their representative will have an opportunity to sum up their cases if they so wish, the employee or representative statement being last.

- 9      Withdrawal  
All parties except the Panel and adviser will withdraw to consider the evidence and decide on an outcome
  
- 10     Recall all parties to clarify points of uncertainty, if necessary  
The Panel may recall the parties to clear points of uncertainty on evidence already given. If recall is necessary, all parties are to return notwithstanding the possibility that only one of them is concerned with the points giving rise to doubt.
  
- 11     Decision and Outcomes  
Notification of the Panel's decision will normally be given verbally to all parties concerned on the day and the reasons for the decision confirmed in writing within five working days from the date of the disciplinary hearing. This letter should include the right of appeal and be sent to the employee by special delivery.

## APPENDIX D: SEQUENCE TO BE FOLLOWED AT ALL APPEAL HEARINGS

Documentation used at and generated by the disciplinary hearing will be circulated to the appeal panel, HR representative, and all relevant parties in advance of the appeal hearing. This must include a list of the witnesses to be called by both the management and employees' side at the Appeal Hearing.

The hearing will be attended by Appeals Panel Members (minimum 3 members and at least the same number as the Governors' Staffing Panel), Adviser to the Panel; the Employee and their representative; the Chair from original Hearing who may also be accompanied by their HR Adviser plus any witnesses.

### Sequence of Events:

- 1      Introductions  
Including procedural issues to be covered and confirmation of witness lists
- 2      Employee Case  
The employee or representative will put their grounds of appeal in the presence of the manager and may call witnesses.
- 3      Cross Examination by Management  
The manager shall have the opportunity to ask questions of the employee and/or witnesses on the evidence given by them.
- 4      Questions from the Appeal's Panel  
The Appeals, Panel and the HR Adviser or nominee may ask questions of the employee and/or witnesses.
- 5      Management Case  
The manager or management's representative will put their response to the grounds of appeal in the presence of the employee and/or representative and may call witnesses.
- 6      Cross Examination by Employee  
The employee or representative will have the opportunity to ask questions of the manager and/or witnesses on the evidence given by them.
- 7      Questions from the Panel  
The Appeals Panel and the Human Resources Adviser or nominee may ask questions of the manager and/or witnesses.
- 8      Summing Up  
The manager and/or adviser and the employee or representative will have an opportunity to sum up their cases if they so wish, the employee or representative statement being last.
- 9      Withdrawal

All parties except the Appeal Panel and their Adviser will withdraw to consider the evidence and decide on an outcome

- 10 Recall all parties to clarify points of uncertainty, if necessary  
The Appeal Panel may recall the parties to clear points of uncertainty on evidence already given. If recall is necessary, all parties are to return notwithstanding the possibility that only one of them is concerned with the points giving rise to doubt.
- 11 Decision and Outcomes  
Notification of the Appeal Panel's decision will normally be given verbally to all parties concerned and will be communicated to the employee in writing as soon as possible. In the case of a decision not to uphold the employee's appeal, reasons will be provided in writing. This letter should be sent to the employee by special delivery.

Close