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Policy name: Disciplinary policy

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Author: Ormiston Academies Trust – HR department

Consulted and agreed with: Ormiston Academies Trust, ASCL, ATL, GMB, NAHT, NASUWT, NUT, Unison and Unite.

Adopted by CEC on 8<sup>th</sup> December 2016

Chair of Governors: David Sword

Academies transferring to OAT after 1 September 2014 are required to adopt this policy under the terms of the TUPE transfer and are only required to inform staff of any changes agreed with unions at National level.

Academies that transferred before this date can chose to consult locally and adopt. In these situations, the Principal should issue the policy to all staff and academy representatives for consultation over a calendar month.

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# Disciplinary Policy

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## Disciplinary Policy and Procedure

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## 1.0 Introduction

- 1.1 The purpose of this policy and procedure is to encourage and support all employees working in academies to achieve and maintain acceptable standards of conduct and behaviour.
- 1.2 This procedure has been adopted by the Governing Body of Cowes Enterprise College on 8<sup>th</sup> December 2016 following consultation with the teachers' associations and support staff trade unions.

## 2.0 Principles

- 2.1 In following this procedure academies are seeking to address issues relating to conduct or behaviour.
- 2.2 It is essential that staff within academies are aware of the high standards of conduct expected of them. Individual staff members should also be mindful of the standards of their own professions as well as relevant national guidance.
- 2.3 All employees have a personal responsibility to maintain appropriate standards of professional conduct.
- 2.4 All employees should be treated fairly, reasonably and consistently under this policy.
- 2.5 Where disciplinary action is being considered employees should be encouraged to consult with their trade union or professional association.
- 2.6 No hearing or committee meeting will be arranged to consider disciplinary action against a trade union lay official until the complaint(s) has been discussed with a full time official (or the Regional Officer if the complaint involves the City Secretary).
- 2.7 Action taken under this policy must be prompt; it is important to recognise that matters left unaddressed may escalate, potentially resulting in a need for more serious disciplinary action.
- 2.8 It is important that disciplinary investigations and hearings are conducted in a fair, transparent and consistent manner.
- 2.9 Employees will have the right to be accompanied to formal disciplinary hearings by a trade union representative or work colleague.

Employees do not have the right to be accompanied by a lawyer at formal disciplinary hearings.

In certain limited cases, however the employee *may* be entitled to be represented by a lawyer at a disciplinary hearing. This is where, as a result of the proceedings, the employee is effectively at risk of being barred from working in their chosen profession. This will be at the discretion of the employer and in all such cases advice may be sought in advance from OAT HR.

- 2.10 Principals should be aware that informal action may often be a more satisfactory method of resolving problems than formal disciplinary action.
- 2.11 An employee has the right of appeal against any disciplinary sanction imposed on them.
- 2.12 Principals, governors, and OAT HR, have a duty to safeguard confidentiality as far as is possible when dealing with issues of conduct.

### 3.0 Scope of Procedure

- 3.1 The procedure applies to all employees working within academies (these staff will hereon be referred to as 'employees').
- 3.2 This procedure is intended to deal with issues of conduct and behaviour by employees working in academies. It will not apply in circumstances where there is a failure to meet the standards of the post due to lack of capability; in these circumstances the relevant capability procedure may be more appropriate. If an employee's general lack of performance is due to health reasons or absence the Attendance Policy may be more appropriate.

### 4.0 Informal Action

- 4.1 A Principal may address minor disciplinary issues through informal action, where a full formal disciplinary hearing is not considered necessary, informal action does not constitute disciplinary action under this policy. Informal action is an effective means of addressing minor disciplinary offences or misdemeanours. The bullet points below are intended as guidance only for Principals when adopting an informal approach to matters of misconduct:

- Gather the facts and summarise these in a document.
- Discuss the matter with the employee in an informal one-to-one meeting, ensuring the employee has the opportunity to respond and give their version of events. The aim of this discussion is to encourage the employee to resolve any perceived problem(s): it is very important that this discussion does not turn into a disciplinary interview or hearing.
- Ensure that the required standards of conduct are made clear to the employee, and they are offered appropriate support and advice to help them achieve these.
- Make the employee aware that the matter is being dealt with informally at this stage, but that failure to address any perceived conduct problem(s) may result in formal disciplinary action.
- Keep a record of the discussion and agreed action points on the employee's personal file, to maintain a record of the employee's history.
- A letter should be sent to the employee summarising the discussion and agreed actions.
- If an employee wishes to be accompanied at an informal disciplinary discussion, by a work colleague or union representative, this request should not normally be refused.

### 5.0 Investigations/charges by external agencies

- 5.1 Where an employee is subject to an allegation being investigated by an external body they should be encouraged to consult their professional association/trade union for support.
- 5.2 If an employee is either charged or under investigation by an external statutory body, e.g. Police, Social Care, etc., it may be necessary for them to be suspended from duty. Please refer to Section 7 – Suspension.
- 5.3 If the allegations involve Child Protection issues advice should be sought immediately from the Local Authority Designated Officer (LADO). No attempt should be made to investigate Child Protection allegations without seeking advice from the LADO, OAT HR will provide support in these cases if requested to do so.

- 5.4 If an employee is imprisoned this may render them unable to fulfil their contract of employment for a period of time, requiring consideration to be given to whether the contract of employment should be terminated. You may wish to seek advice from OAT HR in these cases.
- 5.5 Upon conclusion of an external investigation it may be necessary for an internal disciplinary investigation to take place. The outcome of which may or may not result in further formal action being taken by the academy
- 5.6 There is no requirement to wait until a case is heard by the external body before a formal disciplinary meeting can take place. What is important is that:
- There has been an attempt to investigate the allegations as fully as possible in the circumstances.
  - There is reasonable evidence that the allegations are probably true, based on the findings of the investigation.
  - The allegations justify any action under consideration (e.g. that they constitute gross misconduct if the employee is faced with dismissal without previously having received a final written warning).
  - Confirmation to proceed has been sought through HR
- 6.0 **Complaints regarding conduct outside work**
- If a complaint is made regarding an employee's conduct outside of the academy, and/or if issues of concern come to light following an application for a Disclosure and Barring Service (DBS) disclosure report, consideration must be given to whether the alleged conduct would affect the suitability of the employee to continue working in the academy, and to fulfil the contract of employment. This requires individual consideration in each case. If the alleged conduct would affect the employee's suitability, suspension would allow time for further investigation to determine if there is a disciplinary case to answer (see Section 7).
- 7.0 **Suspension**
- 7.1 When a Principal is considering suspending an employee advice should be sought from OAT HR.
- 7.2 An employee may be suspended from duty if it is reasonably believed that their continued presence in the workplace may either:
- Interfere with the disciplinary investigation.
  - Present a risk of the employee committing further disciplinary offences.
  - Present a risk to the health, safety and security of pupils, staff, parents/carers, and academy resources and/or property.
  - The Principal is empowered to suspend an employee from duty in the above circumstances. In the case of the Principal's absence, a formally nominated member of the Senior Leadership Team may suspend in the above circumstances. The same suspending manager is the only person that can lift the suspension
- 7.3 Suspension does not prejudice the outcome of any disciplinary process that may follow.
- 7.4 During suspension, the employee will continue to receive their ordinary pay. For the purposes of this policy ordinary pay is the standard contractual pay the employee would have received from the academy if they were still working.
- 7.5 If the allegation against the staff member is one involving Child Protection issues advice should be sought immediately from the Local Authority Designated Officer (LADO). No attempt should be

made to investigate Child Protection allegations without seeking advice from the Local Authority Designated Officer and if appropriate OAT HR.

It must be recognised that being suspended can give rise to great anxiety in an employee and potentially also in the investigating officer. The employee should be encouraged to consult with their professional association/trade union for support, as well as being offered support from counselling services and other services as appropriate. This may include a referral to the Occupational Health service. The investigating officer may wish to seek support through OAT HR.

- 7.6 The employee will have the right to have a trade union/professional association representative or work colleague present to witness the suspension. The meeting to suspend must not involve questioning of the employee; this must take place in an investigatory interview, as part of a disciplinary investigation. In the event that an employee's trade union/professional association is unable to provide representation this must not delay the suspension, and the employee must be advised of their options, being either to be accompanied by a work colleague or choose another representative.
- 7.7 Suspension will be confirmed in writing within three working days of the suspension meeting. Guidance on what should be included in the confirmation of suspension letter can be seen in Appendix 5.
- 7.8 The employee should be provided with a named contact to direct any queries towards during their suspension. It is good practice to keep in touch with a suspended employee, e.g. to keep them informed as to the progress of the investigation.
- 7.9 If an employee is charged or under investigation by the police or another statutory body consideration must be given as to whether the alleged offence would affect the suitability of the employee to continue to fulfil their contract of employment in the Academy. Suspension may be appropriate if the allegation would seriously undermine the employee's suitability for their employment.
- 7.10 If suspension results from investigations by an external body (which may or may not relate to actions at work), it is important to maintain contact with the investigating officers.
- 7.11 Where an employee is in police custody this may, in some circumstances, be treated as unauthorised absence, and may therefore result in pay being withheld. Individual circumstances must be taken into consideration in each case.
- 7.12 Suspension will be kept under review by the Principal and if at any point during the investigation it becomes clear that a return to work would not jeopardise the investigation, pose any risk to the pupils, staff, Academy or present no risk of further offences being committed, the suspension should be lifted by the suspending Manager. In cases where the employee is supported by a trade union representative it is good practice to keep the trade union representative informed of progress regarding the period of suspension.
- 7.13 Suspension should be for as short a period as possible. If it is agreed that the employee should return to work following the suspension careful planning is necessary to ensure this is managed as sensitively as possible.
- 8.0 **Investigation**

- 8.1 Investigations are necessary to establish the facts allowing Principals to determine if there is a disciplinary case to answer. When Principals feel a disciplinary investigation is necessary they may wish to contact OAT HR for support.
- 8.2 A trained/experienced Investigating Officer must be appointed by the Principal (where allegations involve the Principal an Investigating Officer will be appointed by OAT. The Investigating Officer must be free from prejudice and able to establish and report the facts in an objective manner.
- 8.3 Where the employee's continued presence in the workplace is reasonably believed to pose a risk of interference with the investigation suspension may be necessary. In these cases, please refer to 'Section 7 – Suspension' within this procedure.
- 8.4 Any employee required to be interviewed as part of the disciplinary investigation should be advised of the date, time and location of the interview in writing in advance of the interview, allowing them reasonable time to prepare. They should also be advised that the interview is being conducted under this policy, and either be signposted to, or sent directly, a copy of this policy. An employee may wish to be accompanied to a disciplinary investigatory interview by a colleague or representative of their trade union/professional association; this request should not normally be refused.
- 8.5 The employee alleged to have committed a disciplinary offence must be advised of the nature of the allegation in writing in advance of the investigatory interview. The employee against whom allegations are made should be interviewed at an early stage in the investigation wherever appropriate. It may be necessary to interview them again at a later stage should additional information come to light during the investigation. The employee should be sent a copy of this policy at the earliest opportunity, and encouraged to contact their union representative for support.
- 8.6 The employee alleged to have committed a disciplinary offence should be given the opportunity to advise the Investigating Officer if there are witnesses they feel should be interviewed as part of the investigation, or other evidence they feel should be gathered.
- 8.7 Investigations should be conducted within a reasonable time period. Where an employee is suspended pending the outcome of the investigation it should be completed in no longer than four weeks, wherever possible. If the investigation is likely to take longer than four weeks this must be reported to the employee.
- 8.8 Where appropriate to the disciplinary investigation it is reasonable to refer to bodies external to the academy for evidence, e.g. OAT Finance Department when investigating allegations of financial irregularity.
- 8.9 There are specific procedures and guidelines for investigating particular types of allegations, e.g. Child Protection. Where an allegation raises concerns regarding Child Protection no attempt should be made to investigate the allegation without reference to the Local Authority Designated Officer. Relevant national guidance must also be adhered to.
- 9.0 **Disciplinary hearings**
- 9.1 Upon the conclusion of the investigation a decision must be taken by the appointed Investigating Officer, as to whether there is a case to answer. The formal report should be provided to the Commissioning Manager who will make the decision as to the appropriate action. Consideration will



- be given to taking no action, informal action, or formal action. Advice is available from OAT HR if necessary.
- 9.2 A Principal may address minor disciplinary issues through informal action, where a full formal disciplinary hearing is not considered necessary (see Section 4 – Informal Action). Informal action does not constitute disciplinary action under this policy.
- 9.3 No formal disciplinary action can be taken unless an appropriately authorised person/committee has conducted a disciplinary hearing. The recommended procedure for a disciplinary hearing can be seen in Appendix 1.
- 9.4 The employee will be given a minimum of ten working days written notice of the hearing, in order to prepare for the hearing and arrange representation. Copies of documents to be presented at the hearing, together with details of any witnesses to be called, should be sent to the employee at least 5 working days in advance of the hearing, ensuring they have reasonable time to prepare a response. Guidance on what to include in the invitation to a disciplinary hearing can be found in Appendix 5.
- 9.5 For hearings involving allegations of potential gross misconduct the person/committee conducting the hearing must have had no involvement in the whole case.
- 9.6 If it is known in advance that the employee will be represented, that representative should be consulted about a mutually convenient date for the hearing. It is important for all parties that the disciplinary hearing takes place in a timely fashion, however, the timing of the hearing may be adjusted within reasonable limits to allow the employee's representative to be present with the aim of ensuring the employee is represented where possible.
- 9.7 The employee (or his/her representative) and the Investigating Officer may call witnesses and introduce documents in support of their response to the allegations, subject to notifying the person conducting the hearing of names of witnesses and supplying them with copies of documents at least 2 days in advance of the meeting.
- 9.8 The person conducting the hearing should ensure that arrangements are made for any of the following to be present:
- A member of OAT HR to act as adviser, if appropriate.
  - The Principal/investigating officer to make a formal presentation of the complaint against the employee.
  - Any other employee(s) of the academy being called as witnesses.
  - Any other supporting documentation to be presented as evidence.
- 9.9 The recommended procedure for a disciplinary hearing can be seen in Appendix 1. The recommended procedure is intended to allow all factors considered relevant to be given due consideration. It may be varied by mutual consent of the parties to meet the individual case.

- 9.10 Witnesses should only be present whilst giving their information and being questioned on it. A person assisting in presenting a case may be present throughout the presentation of evidence even though s/he may also be acting as a witness.
- 9.11 When the person/committee conducting the hearing has heard all the evidence submitted, all others present will withdraw from the hearing, except any specialist HR adviser present. The person/committee will then consider their decision and what action or appropriate sanction is necessary. Should it be necessary to ask further questions of anyone present during the hearing, all those attending (except witnesses) must be present. This is to ensure that no evidence is given unless the other party has the opportunity to respond and present a view on it.
- 9.12 After due consideration, the person conducting the hearing will convey the decision to the employee. Normally the decision will be given verbally as soon as it has been taken and any formal disciplinary warning will be given at the same time. The decision and any formal disciplinary warning will be confirmed in writing within five working days. Exceptionally, the decision may be deferred and given in writing later, together with any formal disciplinary warning. The letter confirming, or giving, a formal warning will set out the rights of appeal.
- 9.13 In academies, it is appropriate to involve the Governing Body in the administering of sanctions if the Principal has personally investigated a complaint, or where the allegations are made by a third party outside the academy.

If the panel consider that unacceptable conduct has taken place, they will call the employee and their representative back into the room to let them know and to ask if there is any mitigation.

## 10.0 Levels of disciplinary action

- 10.1 No formal disciplinary action can be taken unless an appropriately authorised person/committee has conducted a disciplinary hearing. The levels of disciplinary action which may be taken are, in increasing order of seriousness:
- Formal verbal warning.
  - A formal written warning.
  - A final formal written warning.
  - Dismissal with notice or Summary Dismissal.

A table summarising the levels of sanction with details of warning durations etc. can be seen in Appendix 4.

- 10.2 The level of action taken will depend on the seriousness of the misconduct, any mitigating factors, and the circumstances in which the misconduct occurred (please refer to Appendices 2 and 3 for examples of misconduct and gross misconduct). Where an employee has previously been the subject of disciplinary action and subsequently commits a further breach of discipline whilst the warning is still in force, the normal response will be to progress to the next more serious level of action.
- 10.3 Formal verbal warnings
- 10.3.1 Formal verbal warnings can be issued by the Principal following a formal disciplinary hearing. If the Principal is absent, or likely to be absent, for one week or more, then formal verbal warnings may be

issued by either a formally nominated member of the Senior Leadership team, or by a member of the Governing Body (normally the Chair or Vice Chair).

- 10.3.2 A formal verbal warning would normally be issued for a minor offence, or repeated misdemeanours, e.g. lateness. The employee should be advised of the circumstances surrounding the alleged misconduct and be given the opportunity to respond to the allegation in the hearing.
- 10.3.3 Where, after hearing the employee's response, the person giving the warning reasonably believes that the employee's behaviour or conduct was not acceptable, this should be made clear and he/she should be advised of the standard of behaviour expected in future and of the possible consequences of further misconduct.
- 10.3.4 If a formal verbal warning is issued, a letter should be sent to the employee confirming this, and confirming the right of appeal. A copy of the letter should also be placed on the employee's personal file, to maintain a record of the employee's history. Guidance on what should be included in this letter can be seen in Appendix 5.

#### 10.4 Formal written warnings/final formal written warning

- 10.4.1 Formal written warnings/final formal written warnings can be issued for more serious offences, or repeated/subsequent minor offences.
- 10.4.2 Formal written warnings/ Formal final written warnings can be issued by the Principal following a formal disciplinary hearing. If the Principal is absent, or likely to be absent, for one week or more, then formal written warnings may be issued by a member of the Governing Body.
- 10.4.3 When being issued with a formal written warning or final formal written warning the employee should be advised of the standard of behaviour expected in future, and of the possible consequences of failing maintain this standard.
- 10.4.4 A letter should be sent to the employee confirming the warning issued and briefly summarising the reasons why, and confirming the right of appeal. A copy of this letter should be placed on the employee's personal file, to maintain a record of the employee's history.

#### 10.5 Duration of warnings

- 10.5.1 Subject to paragraph 10.5.2 formal verbal warnings will lapse automatically after six months, formal written warnings will lapse automatically after twelve months, and final formal written warnings will lapse automatically after 18 months.
- 10.5.2 Warnings will not lapse if there has been a further warning issued whilst the original warning was still in force. In these cases, the warning will remain in force for as long as the subsequent warning. Warnings may also be extended if the warning related to matters of Health and Safety, or Child Protection. In these cases, it is advisable to seek advice from OAT HR.

#### 10.6 Dismissal

- 10.6.1 In circumstances where conduct does not improve to the required level following previous warnings, or an offence is so serious as to be regarded as gross misconduct, this may result in dismissal. (for examples please refer to Appendix 3),
- 10.6.2 These hearing must be conducted by a committee of three, one of which can be the Principal providing they have not been involved in the investigation process.
- 10.6.3 Where dismissal is a result of an accumulation of warnings, this will normally be with notice.
- 10.6.4 Where dismissal is as a consequence of gross misconduct, this will normally result in summary dismissal (without notice).
- 10.6.5 The decision of the hearing should be confirmed in writing with the right of appeal. The letter must contain a written statement of reasons for dismissal, and must be sent within ten working days of the meeting.
- 10.6.6 In certain cases, it is required to notify other agencies, e.g. Department for Education, DBS of dismissal, or other serious action. OAT HR can provide advice on these situations.
- 11.0 **Appeal**
- 11.1 An employee has the right of appeal against any formal disciplinary action. Appeals must be in writing to the Principal, clearly stating the grounds for appeal together with details of any new evidence/witnesses they wish to present, and must be received by the Principal within ten working days of receipt of the written notification of disciplinary action.
- 11.2 Appeals will be heard by Governors' Appeals Committee.
- 11.3 Additional information which comes to light between the first hearing and the appeal hearing may be taken into consideration at the appeal hearing.
- 11.4 The outcome of the appeal is final.
- 12.0 **Special circumstances**
- 12.1 No hearing or committee meeting will be arranged to consider disciplinary action against a trade union lay official until the complaint(s) have been discussed with a senior representative and where possible a full time official (or the Regional Officer).
- 12.2 If an employee declines to attend any meeting arranged under this procedure the meeting may proceed in his/her absence, at the discretion of the person or committee conducting the meeting. Every effort must be made to contact the employee before proceeding in their absence.
- 12.3 Where an employee, or their union representative, is prevented from attending (e.g. through illness or being in custody), consideration should be given to a short delay in order for him/her to be present. The hearing may proceed despite the employee themselves being absent, for example if the employee's representative is in attendance. Where possible the hearing should take place with the employee present.

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## Recommended Disciplinary Procedure

### List of Appendices

1. Recommended procedure for a disciplinary hearing
2. Examples of misconduct
3. Examples of gross misconduct
4. Recommended procedure for an appeal hearing
5. Guidance on disciplinary letter writing
6. Disciplinary action summary table
7. Initial Action (Flowchart 1)
8. Next Steps (Flowchart 2)
9. Appeals (Flowchart 3)

## Appendix I

### Recommended disciplinary hearing procedure

1. Introduction by Chairperson; explanation of procedure.
2. The Principal/Investigating Officer should present the case for disciplinary action.
3. Employee (or representative) may ask questions of Principal/Investigating Officer.
4. The Chairperson/Committee members and OAT HR representative (if present) may ask questions of the Principal/designated manager.
5. Investigating Officer to call witness(es) if applicable.
6. Employee (or representative) may ask questions of Principal/Investigating Officer's witness(es).
7. The Chairperson/Committee members and OAT HR representative (if present) may ask questions of the Principal/Investigating Officer's witness(es).
8. Employee (or representative) should present his/her case.
9. The Principal/Investigating Officer may ask questions of the employee (or representative).
10. The Chairperson/Committee members and OAT HR representative (if present) may ask questions of the employee (or representative) and ask further questions of the Principal/Investigating Officer regarding the case made on behalf of the employee.
11. Employee (or representative) to call witness(es) if applicable.
12. The Principal/Investigating Officer may ask questions of the employee's witness(es).
13. The Chairperson/Committee members and OAT HR representative (if present) may ask questions of the employee's witness(es).
14. Principal/Investigating Officer to sum up case.
15. The employee (or representative) to sum up case.
16. Parties to retire; the OAT HR representative (if present) may remain with the Chairperson/Committee to offer advice. The Chairperson/committee to consider the cases presented. The Chairperson will notify the parties of their decision. This may be conveyed at the conclusion of the hearing but will in any case be confirmed in writing, with information on any further appeal rights where appropriate.
17. This procedure may be varied by agreement with all the parties.

## Appendix 2

### Examples of Misconduct

This list includes but is not limited to:

- Poor timekeeping.
- Failure to follow recognised procedures.
- Failing to obey a lawful and reasonable instruction.
- Minor breaches of Health and Safety requirements.
- Petty theft or embezzlement whilst at work.
- Misuse of facilities, e.g. email or internet.
- Insubordination.
- Failure to follow recognised procedures – either of the Academy, or another relevant body, e.g. Dept. for Education.
- Bullying and harassment.
- Rude or offensive behaviour.
- Unauthorised Absence.
- Neglect of Duty.
- Failure to take proper care of Academy or LA property.
- Unauthorised employment – engaging in unauthorised employment during hours when contracted to work for the academy or engaging in employment during off-duty hours which conflicts with or is detrimental to the interests of the academy.
- Engaging in activity which could damage the Academy/LA's reputation - or which could undermine public confidence in the conduct of the academy business, e.g. 'blogging'.
- Sleeping on Duty.
- Criminal Conduct – when an employee has been found guilty by a Court of Law of a criminal offence, having regard to the nature of the offence.
- Being an accessory to a Disciplinary Offence – when an employee is knowingly an accessory to any offence or misconduct by another employee.
- Neglect of Health – when an employee without sufficient cause neglects to carry out any instruction of a medical officer, occupational health advisor, or, whilst absent from duty on account of sickness, commits any act or adopts any conduct which hinders their return to duty, or fails to attend a medical appointment if reasonably asked to attend.

**This list is not exhaustive.**

## Appendix 3

### Examples of Gross Misconduct

This list includes but is not limited to:

The following are examples of gross misconduct which may lead to dismissal:

- Any form of abuse of children.
- Stealing from the academy, members of staff, pupils or the public
- Fraud or deliberate falsification of records.
- Fighting or physical violence at work (action outside of work may be included if it is deemed to have an impact on the workplace)
- Deliberate, wilful or malicious damage or misuse of property.
- Serious breaches of academy or other relevant procedures or regulations.
- Being under the influence of alcohol or drugs at work.
- Serious bullying and harassment.
- Serious breaches of Health and Safety rules.
- Serious negligence (e.g. causing, or potentially causing, unacceptable loss, damage or injury).
- Making malicious allegations.
- Serious misuse of facilities, e.g. internet or email.
- Criminal conduct outside work that is relevant to the employment.
- Disqualification from driving (if driving is essential for the performance of the job).
- Failure to comply with a request for a Disclosure and Barring Service (DBS) check and/or failure to obtain a satisfactory DBS report where post is subject to holding a satisfactory DBS check.
- Failure to disclose to the employer any criminal conviction, caution or reprimand, warning or bind-over received whilst employed (if employed in a post subject to a DBS check).
- Failure to maintain membership of a professional body where such membership is a requirement of the post.
- Misconduct in relation to official documents – when an employee without sufficient cause destroys or mutilates any record or document made, kept or required by the academy or lateness or erases or adds to any entry in such a record or document.
- Improper Disclosure of Information – when an employee without proper authority communicates to any person information which was given to the employee in confidence in the course of their employment with the academy.
- Corrupt or Improper Practice – when an employee improperly uses, or attempts to use, their position for their own private advantage or for the private advantage of some other person.
- Discrimination – wilful/direct discrimination against another employee or member of the public on the grounds of disability, age, sex, including sexual harassment), sexual orientation, colour, race, creed, nationality or ethnic origin.
- Damage to academy property.
- Falsification of professional status, qualifications, experience.
- Conduct at work likely to offend decency – including sexual misconduct or harassment.



## Appendix 4

### Recommended procedure for an appeal hearing

1. Introductions by Chair: explanation of procedure.
2. Appellant or representative to state his/her grounds for appeal.
3. First Committee representative may ask questions of appellant.
4. Appeals Committee members and OAT HR representative (if present) may ask questions of the appellant.
5. Appellant to call witness(es) (if applicable).
6. First Committee representative may ask questions of appellant's witness(es).
7. Appeals Committee members/OAT HR representative (if present) may ask questions of the appellant's witness(es).
8. First Committee representative to state the academy's case.
9. Appellant (or representative) may ask questions of First Committee representative.
10. Appeals Committee members/OAT HR representative (if present) may ask questions of First Committee representative.
11. First Committee representative to call witness(es) (if applicable).
12. Appellant (or representative) may ask questions of First Committee representative witness(es) (if applicable).
13. Appeals Committee members/Director's representative may ask questions of Academy's witness (es) (if applicable).
14. First Committee representative to sum up case. \*
15. Appellant (or representative) to sum up case. \*
16. Parties to retire. OAT HR representative (if present) may remain with the Appeals Committee to offer advice.

**N.B. New evidence or material must not be allowed at this stage.**

Appeals Committee to consider the case and notify the parties of their decision. This may be conveyed at the conclusion of the Appeal hearing and then confirmed in writing or confirmed in writing at a later date by the Committee.

This procedure may be varied by agreement of all the parties.

## Appendix 5

### Guidance on disciplinary letter writing

The following is intended as guidance only. More detailed advice, including templates for letters, can be obtained through OAT HR.

#### Letter to confirm suspension

The suspension confirmation letter should contain;

- An indication of the likely duration of the suspension.
- A brief summary of the allegation(s).
- Advise the employee that suspension carries no presumption of guilt and does not prejudice the outcome of the disciplinary investigation.
- Arrangements for the disciplinary interview, or an indication of when this may take place if no arrangements have been made. For example, if other witnesses need to be interviewed or evidence needs to be considered before an interview can take place).
- Conditions of the suspension, for example not entering Academy premises or contacting witnesses.
- Confirmation that employees will continue to receive ordinary pay whilst suspended.
- Details of who the employee should use as a contact during their suspension.
- Encourage the employee to contact their trade union/professional association for support.
- Details of the staff counselling service and for teachers the Teacher Support Network.

#### Invite to an investigatory interview

The invite letter should contain:

- The name of the Investigating Officer and any other officer(s) that will be present.
- The time and place of the interview.
- Confirmation that the interview will take place under this procedure.
- A brief description of the allegations under investigation (including dates wherever possible).
- Ask the employee under investigation if there are any witnesses he/she wishes to be interviewed as part of the investigation, or if there is other evidence they feel should be gathered.
- The employee should be informed as to the potential seriousness of the allegation under investigation, particularly if the allegation, if substantiated, could constitute gross misconduct.

#### Invite to disciplinary hearing

The letter inviting the employee to the disciplinary hearing should include:

- The name of the person/committee who will conduct the hearing.
- The time and place of the hearing.
- Confirmation that the hearing is convened under the disciplinary procedure.
- A description of the alleged misconduct (including dates wherever possible).
- The names of any witnesses to be called and/or copies of any documents to be presented in support of the case.
- Advise that the employee may be accompanied at the hearing by a trade union/professional association representative or work colleague.
- Advise the employee that they may submit documents and/or ask any other person to be present as a witness in support of his/her response (these should be submitted a reasonable time in advance of the hearing).
- Advise the employee as to the potential seriousness of the alleged misconduct and the potential outcome of the hearing. If dismissal is a potential outcome this must be clearly stated in the letter.

The above guidance can also be used to confirm appeal hearings. The below should also be included;

- Confirmation of receipt of written request for appeal.
- Confirmation of receipt of grounds for appeal, including witnesses the appellant wishes to be called.

- That the hearing may be either a re-hearing or a review, dependent on the nature of the grounds for appeal.

### Formal verbal warnings

Formal verbal warnings should be confirmed to the employee in writing within ten working days of being issued. The letter should contain:

- Confirmation that a formal verbal warning has been issued under the Disciplinary policy.
- Brief summary of the reasons why the warning has been issued.
- Brief summary of the meeting in which the warning was issued, including the employee's response to the allegations.
- Confirmation of the standards expected in future.
- Confirmation of the possible consequences of failing to meet the standards expected.
- Confirmation of the how long the warning will remain live, e.g. 6 months from the date issued.
- Confirmation of the right of appeal against the warning, including details of how to do this.
- A copy of the letter confirming the warning should be placed on the employee's personal file to maintain a record of the employee's history.

### Formal written/final formal written warnings

Formal written warnings and final formal written warnings must be confirmed in writing; the letter should include:

- The name of the person who took the decision.
- The names of all those present at the hearing, including witnesses.
- A description of the nature of the allegation(s).
- The conclusion reached on the allegation(s).
- The employee's response to the allegations.
- The action taken, including a decision not to take any action. If a warning is given, the letter should stipulate the level of warning.
- Confirmation of the standards expected in future.
- Confirmation of the possible consequences of failing to meet the standards expected.
- Confirmation of the how long the warning will remain live, e.g. 6 months from the date issued.
- Confirmation of the right of appeal against the warning, including details of how to do this.

Two copies of the letter confirming the warning should be issued to the employee; one of these should be signed by the employee and returned to the Principal to be kept on file, to maintain a record of the employee's history.

### Dismissal

Dismissal must be confirmed in writing within ten working days of the decision being taken. The letter should contain:

- The name of the person/committee that took the decision.
- The names of all those present at the meeting, including any witnesses called.
- A description of the nature of the allegation(s).
- The conclusion reached on the allegation(s).
- The employee's response to the allegations.
- The decision to dismiss.
- Reason(s) for dismissal.
- When employment will be terminated, along with details of what notice, or pay in lieu of notice, will be paid.
- The right of appeal, along with details of how to appeal.

### Appeal hearing outcome

The outcome of an appeal hearing should be confirmed in writing within ten working days of the hearing. The letter should contain:

- 
- The name of the person/committee that heard the appeal and decided the outcome.
  - The names of all those present at the meeting, including any witnesses called.
  - A description of the grounds for appeal.
  - The conclusion reached on the appeal.
  - If dismissal, confirmation of the reason(s) for dismissal, when employment will be terminated, along with details of what notice, or pay in lieu of notice, will be paid.
  - If a decision to dismiss is over-turned, advice regarding arrangements for return to work etc.
  - If upholding a warning, confirm the level of warning, the review date, and what action may follow if there is further misconduct.
  - If over-turning a warning, or reducing the level, confirmation of this, and details of the revised warning.
  - Advise that there is no further right of appeal.

## Appendix 6

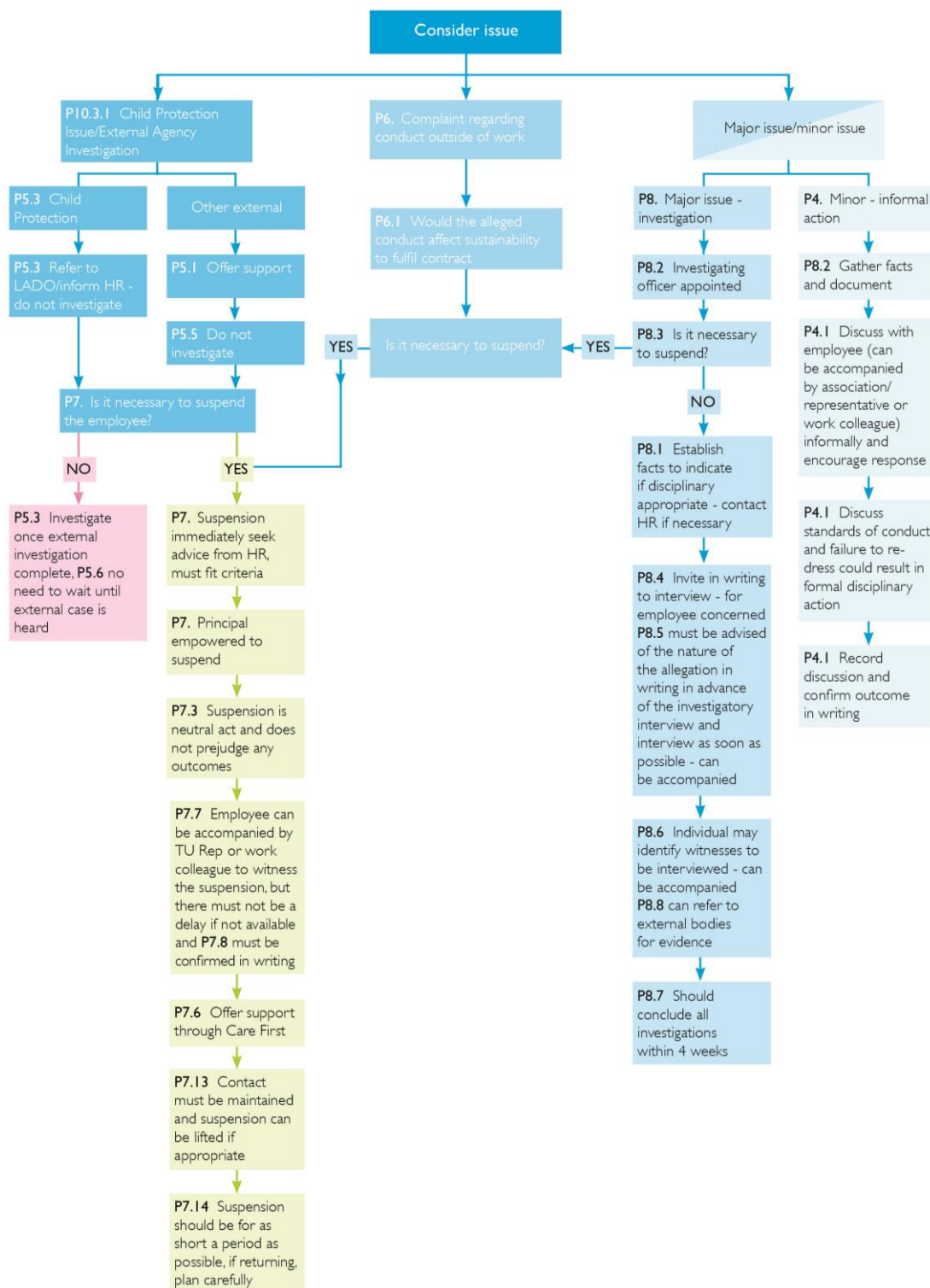
### Disciplinary action summary

| <i>Level</i>                               | <i>Investigation</i>                         | <i>Written invite to hearing</i> | <i>Representation</i>    | <i>Hearing conducted/ warning issued by</i>  | <i>Outcome in writing</i> | <i>Sanction</i>                                       | <i>Appeal heard by</i> | <i>Duration of warning</i> |
|--|--|----------------------------------|--------------------------|--|---------------------------|---|------------------------|----------------------------|
| Informal action                            | Informal, gather facts                       | No                               | Not considered necessary | No hearing                                   | If appropriate            | Letter sent summarising discussion and agreed actions | No appeal              | No warning issued          |
| Formal Action                              | Investigating Officer Nominated by Principal | Yes                              | Yes                      | Principal                                    | Yes                       | Verbal warning or Formal Written warning              | Governors              | 6 months<br>12 months      |
| Formal Action                              | Investigating Officer Nominated by Principal | Yes                              | Yes                      | Principal                                    | Yes                       | Final written warning                                 | Governors              | 18 months                  |
| Formal Action with potential for dismissal | Nominated by Principal                       | Yes                              | Yes                      | Principal and two Governors or Governors x 3 | Yes                       | Potential Dismissal                                   | Governors              | Not applicable             |

## Appendix 7

### Initial steps – Flowchart I

**P3.2** Issues regarding conduct and behaviour are brought to the attention of the Principal to be dealt with by the Disciplinary procedure unless they are of a Capability/Competence or health related basis, in which case, the appropriate procedure should be followed.



## Appendix 8

### Next steps – Flowchart 2

**P9.1** Upon conclusion of the Disciplinary Investigation, if there is a case to answer (that cannot be dealt with under P4 Informal Action), a Hearing will need to be convened P9.3

**P9.3** Write to employee within 10 working days' notice of hearing. Send evidence bundle to be utilised during the Hearing to employee at least 5 working days in advance in all cases (see appendix 1 and 5).

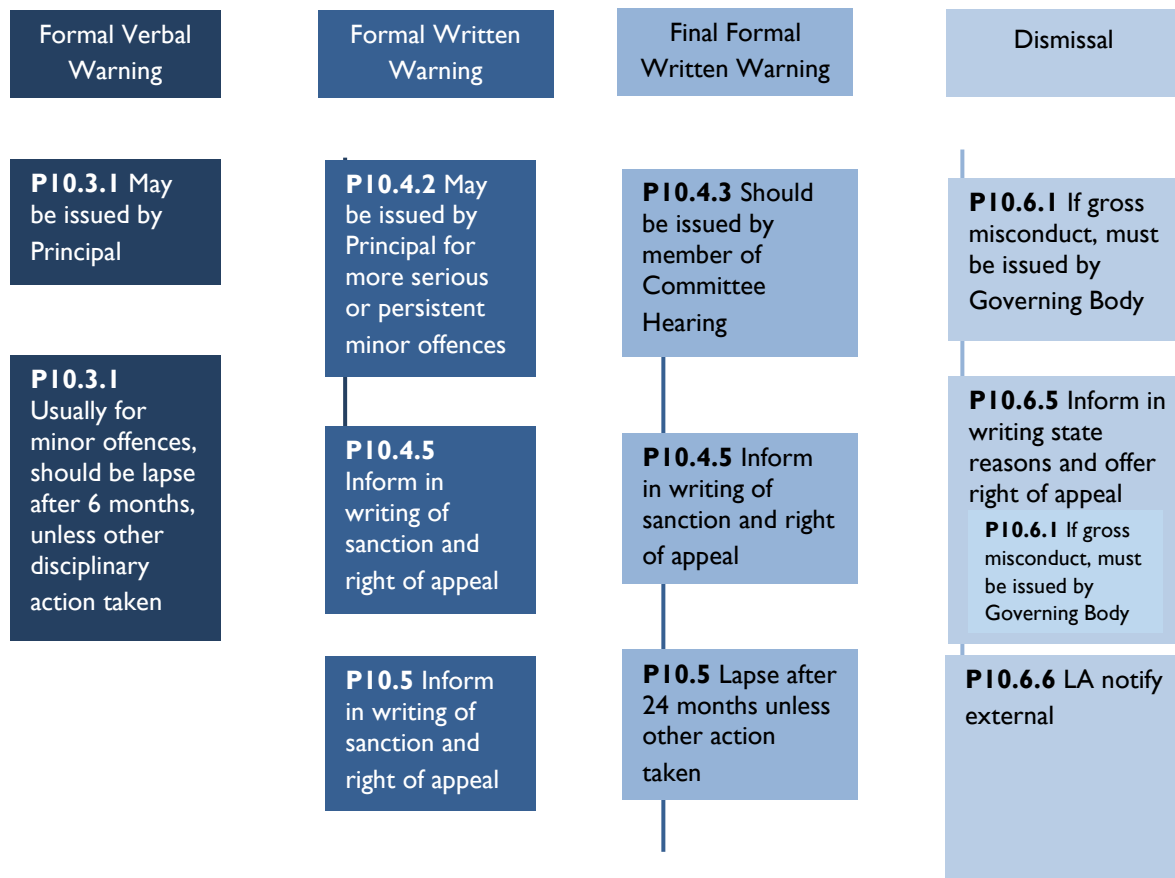
**P9.4** **Hearing:** If allegations of gross misconduct, the hearer(s) must have no prior involvement of the case and if dismissal possible, hearing must be Gov. Body P9.8 person(s) conducting should make request to HR to act as advisor, ensure that witness will be available, all documentation is available and the investigating officer is able to present formally to the hearing committee. **The presenting officer should not communicate with the hearing committee prior to the case being heard.**

**Procedure:** See Appendix 1 which should be varied only by mutual consent.

**P9.11** Upon conclusion of the presentations, all other parties than the Hearing Committee should withdraw except the advisor.

**P9.12** The Hearing committee will convey the decision and any action, orally as soon as possible and confirm in writing within 5 working days, explaining the individual's right of appeal. P9.12

**P10** Levels of Disciplinary Action





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## Appendix 9

### Appeals – Flowchart 3

**PII.1** An employee has the right of appeal against any formal disciplinary action. Appeals must be in writing to Principal within ten working days of receipt of the written party notification of disciplinary action.

**PII.2** Appeals will be heard by Governors' Appeals Committee.

**PII.3** At the start of the appeal hearing the employee must set out their ground for appeal.

**PII.4** Additional information which comes to light between the first hearing and the appeal hearing may be taken in to consideration at the appeal hearing.

**PII.5** The outcome of the appeal is final.